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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

DISCOVERY PARK COMMUNITY ALLIANCE, a Washington non-profit corporation; and ELIZABETH A. CAMPBELL,

Petitioners,

V.

CITY OF SEATTLE,

Respondent.

No.

**LAND USE PETITION PURSUANT
TO LAND USE PETITION ACT;
PETITION FOR REVIEW AND
DECLARATORY JUDGMENT**

(RCW 36.70C.070)

LAND USE PETITION

Pursuant to the Land Use Petition Act, Ch. 36.70C RCW, State Environmental Policy Act (SEPA), Chapter 43.21C RCW, and Chapters 7.16, 7.24 and 7.40 RCW and Article IV, Sec. 6 of the Washington State Constitution the petitioners, Discovery Park Community Alliance, a Washington non-profit corporation, and Elizabeth A. Campbell bring this Land Use Petition and Complaint For Certiorari and Review, Declaratory and Injunctive Relief based upon the allegations set forth below for review of City of Seattle Council Resolution 31887, Council Bill 119510 and Council Bill 119535 all dated June 10, 2019.

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I. IDENTITY OF PETITIONER

1.1 Petitioner. The name and mailing address of Petitioners:

Discovery Park Community Alliance,
a Washington non-profit corporation
3826 24th Avenue W.
Seattle WA. 98199

Elizabeth A. Campbell
3826 24th Avenue W.
Seattle WA. 98199

1.2 Petitioners' Attorney. The names and mailing address of Petitioners' attorneys:

Daniel J. Frohlich
Thomas L. Dickson
DICKSON FROHLICH, PS
1200 East "D" Street
Tacoma, WA 98421

II. IDENTITY OF RESPONDENT

2.1 Respondent. The City of Seattle, a Washington municipal corporation, through the Seattle City Council, sponsored and adopted the decisions identified at Paragraph 4 of this Petition.

III. IDENTITY OF ADDITIONAL PARTIES

3.1 Additional Parties. RCW 36.70C.040(2)(c) and RCW 36.70C.050 require the joinder in a land use petition of the "taxpayer for the property at issue in the records of the county assessor." The owner of the Fort Lawton Reserve Center is the United States of America, Department of the Army. The King County Assessor's website lists City of Seattle FAS under the taxpayer's name, without an address, for parcel number 102503-9334. See Attachment D hereto. Upon information and belief, "FAS" means the Finance and

1 Administrative Services department for the City of Seattle which leases the Fort Lawton
2 Reserve Center pursuant to Ordinance 125309. Because the City of Seattle is listed as the
3 Respondent, the departments within the City of Seattle will have adequate notice.
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5 **IV. IDENTITY OF DECISIONS**

6 4.1 Decisions. The decisions challenged by this action are:

7 4.1.1. City of Seattle Council Resolution 31887, passed on June 10, 2019. The
8 decision maker was the City Council of the City of Seattle. A copy of the City Council
9 Resolution 31887 is attached as Attachment A.

10 4.1.2. City of Seattle Council Bill No: CB 119510/Ordinance 125842 passed
11 on June 10, 2019. The decision maker was the City Council of the City of Seattle. A copy of
12 the City Council Bill No: CB 119510 is attached as Attachment B.

13 4.1.3. City of Seattle Council Bill No: CB 119535/Ordinance 125841 passed
14 on June 10, 2019. The decision maker was the City Council of the City of Seattle. A copy of
15 the City Council Bill No: CB 119535 is attached as Attachment C.

16 **V. STANDING**

17 5.1 Pursuant to RCW 36.70C.060(2) and common law rules, the Petitioners have
18 standing to bring this action for the following reasons:

19 (a) The land use decisions have prejudiced or is likely to prejudice that person.

20 Petitioner Discovery Park Community Alliance is composed of residents and property owners
21 adjacent to a City-proposed project at the Fort Lawton Reserve Center property, as is Petitioner
22 Campbell, all are users of Discovery Park. Discovery Park is immediately adjacent to the Fort
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1 Lawton Reserve Center property. The Petitioners will be prejudiced by the approval of
2 Resolution 31887, CB 119510 and CB 119535, and their property interests affected, because
3 the Respondent has failed to follow the established procedures, and the use which is proposed
4 for that property will create adverse impacts on the surrounding community to which they are
5 a part of, the land use decisions are contrary to the City's Comprehensive Plan policies that aim
6 to protect and improve upon open space and environmentally critical areas like Discovery Park.
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8 (b) That person's asserted interests are among those that the local jurisdiction was
9 required to consider when it made the land use decision. The City, under the terms of its local
10 ordinance and the Base Closure Act and Realignment (BRAC) process, its statutes and rules
11 requires that a final public hearing be held and that public input be received. The Petitioners
12 herein are among those whose interests are required to be considered.

13 (c) A judgment in favor of that person would substantially eliminate or redress the
14 prejudice to that person caused or likely to be caused by the land use decision. Petitioners are
15 prejudiced and harmed by the failure of the Respondent to follow the established procedures
16 and the use which is proposed for that property will create adverse impacts on the surrounding
17 community to which they are a part of. The reversal of the decisions to adopt Resolution 31887,
18 CB 119510 and CB 119535 would eliminate the prejudice to Petitioners caused by the
19 decisions.

20 (d) The Petitioners have exhausted administrative remedies to the extent required by
21 law. The procedures of the City of Seattle following passage of Resolution 31887, CB 119510
22 and CB 119535 do not provide for any administrative remedies or review. The Petitioners have
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1 provided numerous comments to the City of Seattle during the public review process.
2
3 Petitioners have exhausted available administrative review opportunities.

4 **VI. STATEMENT OF FACTS**

5 6.1 The Base Closure Community Redevelopment and Homeless Assistance Act of
6 1994 (the Redevelopment Act) establishes the mechanisms for the “timely closure and
7 realignment of military installations inside the United States.”

8 6.2 Base Realignment and Closure, “BRAC,” is the process that the Department of
9 Defense uses to reorganize its installation infrastructure to more efficiently and effectively
10 support its forces, increase operational readiness, and facilitate new ways of doing business.

11 6.3 The “BRAC process” refers to a temporary authority that amends the Defense
12 Base Closure and Realignment Act of 1990 (P.L. 101-510), hereafter referred to as the Base
13 Closure Act, National Defense Authorization Act for Fiscal Year 2002, (P.L. 101-510;
14 amended the Defense Base Closure and Realignment Act of 1990 (P.L. 101-510).

15 6.4 HUD’s Office of Community Planning and Development (CPD) and the
16 Department of Defense’s Office of the Assistant Secretary for Economic Security jointly
17 developed and published regulations that implement the Redevelopment Act. The regulations,
18 although identical, are found in two locations. HUD’s regulations are codified at 24 CFR § 586
19 and DoD’s version is found at 32 CFR § 176.

20 6.5 The Act requires the Secretary of Defense to determine within six months of a
21 decision to close a military base whether other federal departments or agencies can use the
22 property. If none can, the property is deemed "surplus" to the needs of the federal government
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1 and made available for disposal through the BRAC process. The Secretary must “publish in
2 the Federal Register and in a newspaper of general circulation in the communities in the vicinity
3 of the installation,” a notice of availability of “surplus” property “and may be available for
4 conveyance to State and local governments and other eligible entities for public benefit
5 purposes.”

6
7 6.6 Thirty days thereafter, the Local Redevelopment Authority (LRA), an entity
8 “established by State or local government and recognized by the Secretary of Defense,” in the
9 present case before the Court, the City of Seattle, must “[p]ublish, ... in a newspaper of general
10 circulation in the communities in the vicinity of the installation, the time period during which
11 the LRA will receive notices of interest from ... representatives of the homeless and other
12 interested parties,”

13 6.7 Notices of interest “shall describe the need of the [applicant] for the buildings
14 or property,” and must include, at a minimum, “a description of the planned use”. “Other
15 interested parties” means “any parties eligible for the conveyance of property ... under ... the
16 Federal Property and Administrative Services Act of 1949 (FPASA), a statute designed to
17 provide “an economical and efficient system for ... [d]isposing of surplus [federal] property,”
18 Non-profit educational institutions, if recommended by the Secretary of Education, are among
19 the groups eligible for FPASA conveyances.

20 6.8 After the LRA publishes the required notice, the process bifurcates: Notices of
21 interest submitted by representatives of the homeless and those submitted by FPASA-eligible
22 “other interested parties” are considered on separate, parallel tracks.
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2 6.9 On the public benefit conveyance track, the Secretary of Defense evaluates any
3 notices of interest submitted by FPASA-eligible parties. This process occurs before the LRA
4 submits its redevelopment plan to the HUD secretary. If the Secretary of Defense determines
5 that an “other interested” applicant meets the eligibility standards established by the FPASA
6 and associated regulations, the Secretary effects a “public benefit conveyance” of the requested
7 property to that party.

8 6.10 Meanwhile, on the homeless-assistance track, the LRA begins by considering
9 both homeless submissions and potential commercial uses in order to formulate a
10 comprehensive redevelopment plan for the surplus property.

11 6.11 The LRA then submits its plan to the Secretary of Housing and Urban
12 Development, who in turn determines whether the LRA has “balance[d]” commercial and
13 homeless needs “in an appropriate manner.”

14 6.12 After completion of the two parallel processes - that is, after the Secretary of
15 Defense has conducted the public benefit conveyance screenings and the HUD Secretary has
16 approved the LRA's plan - the Secretary of Defense “shall dispose” of the remaining base
17 property, giving “substantial deference” to the LRA's redevelopment plan.

18 6.13 While the Military Department will give deference to the redevelopment plan in
19 preparing the record of decision or other decision documents, it always retains ultimate
20 responsibility and authority to make the final property disposal decisions.

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2 6.14 Over 13 years ago, in May of 2006, the City of Seattle was recognized by the
3 Department of Defense as the Local Redevelopment Authority (“LRA”) for the Fort Lawton
4 Army Reserve Center (FLARC) Base Realignment and Closure (“BRAC”) process.

5 6.15 The City/LRA was and is required to meet statutory deadlines as part of the
6 BRAC process all these years. Instead, the City/LRA has not met a single mandatory deadline
7 throughout the BRAC proceedings.

8 6.16 On September 27, 2017 and again on January 29, 2018, Petitioner Discovery
9 Park Community Alliance submitted its comments via letters on the Fort Lawton
10 Redevelopment and Proposed Environmental Impact Statement (“EIS”) to the City of Seattle’s
11 Office of Housing. See Attachment E incorporated herein by this reference as if fully set forth.

12 6.17 The Petitioner’s comments on the EIS stressed that developing the FLARC
13 property contradicts the City’s Comprehensive Plan policies that aim to protect and improve
14 upon open space and environmentally critical areas by suddenly allowing multifamily
15 development on a property that was historically public and located in a single-family residential
16 area. *See* SMC 23.34.008.F.1.g; *see also* Comprehensive Plan at 66 (LU G14 aims to
17 “[m]aintain the city’s cultural identity and heritage”).

18 6.18 In addition, Petitioner further indicated that rezoning to a high-density
19 development on the Fort Lawton property would be inconsistent with the Land Use Code, the
20 Comprehensive Plan, and the single family zoning of the Magnolia neighborhood and the
21 historic and natural character Discovery Park and would create negative impacts and undermine
22 the Comprehensive Plan’s goals of planning development around urban centers and urban
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1 villages, providing adequate transit, providing for recreational opportunities and protecting the
2 natural environment. The City also failed to consider other “reasonable alternatives”¹ for the
3 FLARC property including selecting an alternative, available site for the LRA’s homeless
4 assistance housing, and then developing the FLARC site as a park or bank it as future park
5 space, and continued to move forward with its redevelopment plans (prior to the completion of
6 SEPA review) to develop the space in accordance with the City’s preferred alternative.
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8 6.19 The Petitioner’s comments further pointed out that the City has substantially
9 altered the redevelopment proposal it submitted to HUD in 2007 and by doing was required to
10 re-open the Notice of Interest process to competitive bidding and solicitation for new Notices
11 of Interests from homeless housing and service providers or from any organization that is
12 eligible for a public benefit conveyance; and that the City’s reliance upon the Department of
13 Defense’s/U.S. Army Reserve 88th Regional Support Command’s (“Corps”) July 2012
14 Environmental Assessment (“EA”) and its October 18, 2012 Finding of No Significant Impact
15 (“FONSI”) , both documents based on the City’s 2007 redevelopment plan, was improper due
16 to the fact that the environmental review and finding were invalid.

17 6.20 There is also significant evidence that Seattle Public Schools (SPS) intends to
18 build a school at the FLARC site, but both it and the City have only claimed that SPS’s desired
19 portion of the FLARC land is for “playfields” in an effort to avoid environmental review under
20 the State Environmental and Protection Act of SPS’s planned school on the FLARC property.
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22 ¹ WAC 197-11-440(5)(b).
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2 6.21 Despite the issues raised by the Petitioner, the Final Environmental Impact
3 Statement (FEIS) for the proposed Fort Lawton Army Reserve Center Redevelopment Project
4 was issued by the City of Seattle's Office of Housing on March 29, 2018. Said FEIS forms the
5 basis which allowed Resolution 31887, CB 119510 and CB 119535 to move forward for
6 approval.

7 6.22 On June 10, 2019, the City/LRA, via the Seattle City Council, adopted
8 Resolution 31887, CB 119510 and CB 119535 in violation of state and local law and
9 regulations, making the decisions ultra vires and contrary to law.

10 **VII. STATEMENT OF EACH ERROR IN THE DECISION AND SUPPORTING**
11 **FACTS**

12 The following is a separate statement of each error alleged to have been committed:

13 7.1 The City/LRA Redevelopment Plan is Time Barred:

14 7.1.1 It is required by 24 CFR § 586 that, "From the deadline date for receipt
15 of notices of interest described at §586.20(c)(1), the LRA shall have 270 days to complete and
16 submit the LRA application to the appropriate Military Department and HUD." The beginning
17 of the 270 day period was January 10, 2007 and therefor the deadline date for receipt of notices
18 of interest would have been October 7, 2007. The City/LRA did not submit its application
19 (redevelopment plan and homeless assistance submission until October 13, 2008, over a year
20 late. The City/LRA has never made a request to the Deputy Under Secretary of Defense or
21 HUD, for the required 32 C.F.R §176.15 waiver and extension of deadlines in this matter.
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2 7.1.2 Federal regulations require that, “In the event there is no LRA
3 recognized by DoD or if a redevelopment plan is not received from the LRA within 9 months
4 from the date referred to in section 2905(b)(7)(F)(iv) of Pub. L. 101-510, (unless an extension
5 of time has been granted by the Deputy Under Secretary of Defense (Installations and
6 Environment)), the Secretary concerned shall, after required consultation with the governor and
7 heads of local governments, proceed with the disposal of property under applicable property
8 disposal and environmental laws and regulations.” 32 C.F.R. §174.6(c)(2).

9 7.1.3 The Department of Defense is required to comply with the provisions of
10 32 CFR §174.6(c)(2) and must proceed to disposing of the Fort Lawton Army Reserve Center
11 property through the alternative statutory methods available to it, including through negotiated
12 sale, public sale, public auction, or possibly other conveyance methods pursuant to 40 U.S.C
13 §545.

14 7.1.4 Therefore, the City/LRA engaged in an unlawful procedure and/or failed
15 to follow the proscribed process, and therefore the decision approving Resolution 31887, CB
16 119510 and CB 119535 are ultra vires, in violation of state and local law and regulations, and
17 that said decision is contrary to law.

18 7.2 The City/LRA Failed to Complete Conditions Precedent to the Decision.

19 7.2.1 CB 119510 meets the criteria for a Type IV (quasi-judicial) decision
20 under SMC 23.76.004, as the proposed rezone would amend the City’s Official Land Use Map.
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2 7.2.2 A Type IV rezone action is commenced by an eligible party under SMC
3 23.76.04 filing a land use application with the Seattle Department of Construction and
4 Inspections (“SDCI”).

5 7.2.3 No such land use application for a rezone has been made to SDCI by the
6 record of fee title holder for the Fort Lawton property, the Secretary of the Army, or any
7 authorized agent thereof.

8 7.2.4 Even in the event that the City/LRA holds the authority to pursue the
9 rezone, the City/LRA has not filed the requisite land use/rezone application under SMC Title
10 23.76.040 and completed the procedural steps for a Type IV rezone.

11 7.2.5 The City/LRA has not set out the legal description of the proposed
12 rezone; rather, the City/LRA merely indicated that the “legislation rezones a 9- to 10-acre
13 portion of the Fort Lawton property.” No plat map, partial plat map, lot line adjustment or
14 other adjustment of the parcel boundaries of the Fort Lawton property that can be used to
15 delineate the exact location of the rezone have been provided by the City of Seattle, because
16 none exists.

17 7.2.6 There also has been no requisite public notice of the rezone according to
18 SMC 23.76.

19 7.2.7 On April 16, 2019 the Director of SDCI completed and filed with the
20 City Council his Director’s report that is required pursuant to SMC 23.76.050. However, the
21 Director did not file it with the Hearing Examiner as required by SMC 23.76.050(E).
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2 7.2.8 There also has been no public hearing conducted by the Hearing
3 Examiner's office for the Type IV rezone as required pursuant to SMC 23.76.052(A).

4 7.2.9 Therefore, the City/LRA engaged in an unlawful procedure and/or failed
5 to follow the proscribed process, and therefore the decision approving CB 119510 is ultra vires,
6 in violation of state and local law and regulations, and that said decision is contrary to law.

7 7.3 The City/LRA Cannot Include The Seattle Public Schools As A Party To The
8 Fort Lawton Redevelopment Plan.

9 7.3.1 The Seattle Public Schools (SPS) did not submit an NOI to the LRA.
10 Because SPS never submitted a Notice of Interest (NOI) to the City/LRA by July 19, 2007 it
11 therefore is disqualified from seeking a public benefit conveyance as part of the LRA's Fort
12 Lawton Redevelopment Plan per 24 CFR §586.20(C)(1)(iii).

13 7.3.2 Despite SPS's failure to submit a NOI, the City/LRA's redevelopment
14 plan claims to set aside portions of the property for two SPS owned "public playfields." On
15 March 29, 2018, the City/LRA issued its *Final Environmental Impact Statement* (EIS). Said
16 EIS does not reference an SPS school on the FLARC land.

17 7.3.3 However, on February 19, 2019, the voters in the city of Seattle approved
18 SPS's Proposition Two BEX V Capital Levy which authorized SPS to proceed with the Fort
19 Lawton project and approved the funds for SPS to acquire and build on the FLARC land. While
20 the legislation did provide for the Fort Lawton/Discovery Park playfields, the measure indicated
21 that "...If any or all of the improvements have been completed, or their completion duly
22 provided for, *or their completion found to be impractical*, the District may apply the levy
23

1 proceeds or any portion thereof to other portions of the improvements or to other capital
2 purposes of the District, as the District in its discretion shall determine.”
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4 7.3.4 Records show that SPS intends to build a school at the FLARC and the
5 “public playfields” is a workaround by the City/LRA to avoid environmental review of SPS’s
6 planned school on the FLARC property. The City Council in its recitals for CB 119535 affirms
7 the City/LRA has partnership agreements with SPS, that greatly expands on previous
8 representations made to the public about the limited role that SPS was to have in the
9 redevelopment plan. The City/LRA claimed in its scoping, Draft Environmental Impact
10 Statement (DEIS) and Final Environmental Impact Statement (FEIS) that SPS had made no
11 commitment to the LRA that it was going proceed with any attempt to obtain a conveyance of
12 FLARC property that there was no need for the LRA to truly evaluate any role the SPS might
13 have in the redevelopment plan. The agreements with SPS commit the City/LRA to work with
14 SPS in obtaining a public benefit conveyance of the FLARC property through the U.S.
15 Department of Education.

16 7.3.5 The City/LRA and SPS have impermissibly taken final project action
17 and have proceeded with their joint redevelopment plans for the FLARC property prior to any
18 review of the LRA’s redevelopment plan by HUD, prior to any recommendation from HUD to
19 the DoD about whether DoD/Department of the Army should adopt the LRA’s plan or not, prior
20 to DoD preparing its NEPA mandated environmental assessment of the redevelopment plan and
21 any disposal alternative(s) it might consider, and prior to final action being taken by the
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1 Department of Defense, its issuance of a Record of Decision (ROD) or Finding of Suitability
2 to Transfer (FOST).

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4 7.3.6 Therefore, the City/LRA engaged in an unlawful procedure and/or failed
5 to follow the proscribed process, and therefore the decision approving CB 119535 is ultra vires,
6 in violation of state and local law and regulations, and that said decision is contrary to law.

7 7.4 City of Seattle Must Approve the Archdiocesan Housing Authority Lease By
8 Ordinance

9 7.4.1 The City/LRA's Fort Lawton Redevelopment Plan's Appendix H-
10 Housing Assistance Submission' ("HAS"), includes a lease between the City of Seattle and
11 Catholic Housing Services of Western Washington (Archdiocesan Housing Authority), titled
12 *LEASE Between The City of Seattle a municipal corporation of the State of Washington and*
13 *Archdiocesan Housing Authority a Washington nonprofit corporation*, hereinafter referred to
14 as "AHA Lease."

15 7.4.2 According to BRAC, the City/LRA obligates itself to abide by the terms
16 and conditions of the AHA Lease once it transmits it to the DoD and HUD as part of the
17 redevelopment plan application package. Thus, making the AHA Lease a "Legally Binding
18 Agreement" pursuant to 24 CFR § 586.30(b)(3). HUD's BRAC technical assistance manuals
19 state, "Each NOI selected for homeless assistance must be finalized in legally enforceable
20 documents, referred to as the legally binding agreements (LBAs). The LBAs are the concrete
21 result of negotiations between the LRA and the homeless assistance provider. HUD
22 recommends that both parties engage legal counsel to negotiate and draft LBAs. The homeless
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1 assistance project described in the LBAs may differ from the NOI submitted by the homeless
2 assistance provider. However, the LBAs must both commit the LRA to fulfilling the homeless
3 assistance component of the redevelopment plan and commit the homeless assistance provider
4 to carry out the proposed activity. In the future, if either the LRA or the homeless assistance
5 provider fails to fulfill its commitment, the other should be able to enforce the contract through
6 legal action.” HUD. “Guidebook on Military Base Reuse and Homeless Assistance”. U.S.
7 Department of Housing and Urban Development. July 2006.
8 <https://files.hudexchange.info/resources/documents/MilitaryBaseReuse.pdf>.
9

10 7.4.3 The Seattle City Council’s approval for the AHA Lease must be separate
11 from the resolution adopting the redevelopment plan and homeless assistance application
12 package because the AHA Lease exceeds the Director of Finance and Administrative Services
13 authority to enter into new leases per the Seattle Municipal Code 3.127.010(B) – Authority to
14 negotiate and execute leases for City-owned or City-managed property states, “The authority
15 in this section is limited as follows: [...] B. The total term of any new lease together with all
16 extensions of the initial term thereof, and the total term of any amended lease together with all
17 extensions of the term thereof, shall *not exceed five years* in duration; provided, however, that
18 this limitation shall not restrict the authority of the Director to negotiate and to enter into
19 subsequent leases of the same property for periods not to exceed five years...” See also SMC
20 3.127.020(A).

21 7.4.4 The Seattle City Council’s authorization to enter into the AHA Lease is
22 also required to be in the form of an ordinance not a resolution. City of Seattle resolutions
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1 are not binding law and are used for administrative or temporary matters, approval of the
2 AHA Lease is a legislative act and Article IV of the Seattle City Charter at Section 7-
3 Legislative Acts By Ordinance; Subject Matter; Title; Enacting Clause; requires, “Every
4 legislative act of said City *shall be by ordinance*. Every ordinance shall be clearly entitled
5 and shall contain but one subject, which shall be clearly expressed in its title.”
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7 7.4.5 Therefore, the City/LRA engaged in an unlawful procedure and/or failed
8 to follow the proscribed process, and therefore the decision approving Resolution 31887 is ultra
9 vires, in violation of state and local law and regulations, and that said decision is contrary to
10 law.

11 7.5 There is No Community Relations Plan that Coincides with the Current
12 Redevelopment Proposal

13 7.5.1 The community relations plan (“CRP”) is a legal requirement of the City
14 of Seattle by law and by policy. The LRA/City of Seattle requires that any developer and their
15 partners in a housing project using funds provided through the City of Seattle’s Office of
16 Housing (“OH”) must, “Prior to application for OH funding for production or preservation of
17 affordable rental housing or development of housing for low-income homebuyers, applicants
18 are required to prepare and begin implementing a community relations plan, including
19 neighborhood notification activities.”²
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21 ² “Neighborhood Notification and Community Relations Guidelines Policy”. City of Seattle/Office of
22 Housing.
23 https://wayback.archiveit.org/3241/20141217232622/http://www.seattle.gov/neighborhoods/fortlawton/brac/pubs/ft_lawton_CRP_guidelines.pdf

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2 7.5.2 In 2008 the City/LRA, its partners, and the neighborhood near the project
3 site negotiated a community relations plan. The managed homeless housing portion of the
4 redevelopment project would have been a fraction of the greater housing project. By units, the
5 managed homeless housing portion would be 42% of the total project uses.

6 7.5.3 As designed, the current redevelopment project is completely different
7 from the prior redevelopment plan. The current redevelopment plan includes no mediating,
8 market rate, independently living residents planned for the FLARC property. Rather than
9 homeless assistance and low-income housing being a fraction of the use proposed, it is 100%
10 of the use proposed.

11 7.5.4 No Community Relations Plan has been established for the uses, people,
12 and programs that will be at the FLARC property.

13 7.5.5 By not creating a community relations plan for the current
14 redevelopment plan project the City/LRA has not complied with HUD's requirements and, by
15 extension, has not complied with the State of Washington's requirements or the City's own
16 policies and funding requirements. The public is entitled to a community relations plan based
17 on the current Redevelopment plan.

18 7.5.6 Therefore, the City/LRA engaged in an unlawful procedure and/or failed
19 to follow the proscribed process, and therefore the decision approving Resolution 31887 is ultra
20 vires, in violation of state and local law and regulations, and that said decision is contrary to
21 law.
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2 7.6 The City Failed to Allow Public Review and Comment on the Homeless
3 Assistance Submission

4 7.6.1 The City/LRA is required by 32 CFR § 176.20 et seq. to develop an
5 application which includes a redevelopment plan *and* a homeless assistance submission.

6 7.6.2 According to HUD's *Guidebook on Military Base Reuse and Homeless*
7 *Assistance* which it provided to the City/LRA, "The LRA must periodically make drafts of its
8 *redemption plan and homeless assistance submission* documents available to the public for
9 review and comment as the LRA prepares them. Once the *redemption plan and the homeless*
10 *assistance submission* are completed, the LRA must hold at least one public hearing to receive
11 input on these documents...*The LRA must submit the following three items:*

- 12 • The redevelopment plan
- 13 • The homeless assistance submission
- A summary of public comments on *both* documents."³

14 7.6.3 During February of 2019 and part of March of 2019, the City/LRA made
15 available on its website the *Draft Redevelopment Plan* (without its appendices) and solicited
16 public comment on it. However, at no time did it disclose to the public the additional key
17 document that is part of the LRA's application, the LRA's *Homeless Assistance Submission*
18 ("HAS").

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21 ³ HUD. "Guidebook on Military Base Reuse and Homeless Assistance." U.S. Department of Housing
22 and Urban Development /Office of Community Planning and Development-Office of Special Needs Assistance
23 Programs. P. 7 July 2006 <https://www.hudexchange.info/resources/documents/MilitaryBaseReuse.pdf>

 "The LRA must comply with applicable local law or ordinances regarding the formality of public hearings
and may revise the plan and homeless assistance submission in accordance with issues raised at the hearing."

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2 7.6.4 The City/LRA did not ask or allow the public to comment on the HAS
3 as required by law as it was not made public until after the February public comment period
4 and subsequent hearing on March 4, 2019.

5 7.6.5 The purpose of the public meeting held by the City/LRA on March 4,
6 2019 was to fulfill the requirements of 32 CFR § 176.20 (c)(6), to (1) to provide the public
7 with a copy of the City/LRA's draft redevelopment plan *and* homeless assistance submission,
8 (2) to gather public input on two items, and (3) hold a public hearing prior to its submission to
9 HUD.

10 7.6.6 As per the City/LRA's public notices, and its website for the March 4,
11 2019 meeting, there was no mention of the Homeless Assistance Submission, only the Draft
12 Redevelopment Plan was referenced.

13 7.6.7 At the March 4, 2019 meeting the City/LRA only provided information
14 and discussion on the Draft Redevelopment Plan. The City/LRA made no mention of the
15 Homeless Assistance Submission at the meeting.

16 7.6.8 On May 2, 2019, two months after the City/LRA's March 4, 2019
17 meeting, the City/LRA posted the HAS on its website. However, the HAS posted on May 2,
18 2019 was incomplete for various reasons.

19 7.6.9 The City/LRA has failed to complete all of its assorted components of
20 its BRAC application package, provide them to the public in their entirety, in a manner that is
21 accessible to all of the public, not just online, and provide for a public review and comment
22 period, and public hearing as required pursuant to 32 CFR § 176.20 (c)(6).
23

1
2 7.6.10 Therefore, the City/LRA engaged in an unlawful procedure and/or failed
3 to follow the proscribed process, and therefore the decision approving Resolution 31887 is ultra
4 vires, in violation of state and local law and regulations, and that said decision is contrary to
5 law.

6 7.7 The City Failed to Comply With SEPA

7 7.7.1 Petitioners' interests are within the zone of interests of SEPA because
8 Petitioners are concerned and affected by the impacts the City/LRA's redevelopment plan will
9 have on the environment, and on Discovery Park, given that fact that the plan has changed, not
10 all adverse environment impacts, including those on Discovery Park, have been reviewed under
11 the terms of SEPA, and that fact that the City/LRA's redevelopment plan of the FLARC
12 property contradicts the City's Comprehensive Plan policies that aim to protect and improve
13 upon open space and environmentally critical areas.

14 7.7.2 Petitioner is prejudiced and harmed by the failure of the City/LRA to
15 consider environmental impacts under SEPA because full compliance with SEPA would require
16 that the City Council reconsider its decisions and adopt plans for the Fort Lawton area that
17 would be consistent with environmental protection and City's Comprehensive Plan.

18 7.7.3 The City/LRA, as stated herein, has acted illegally, arbitrarily and
19 capriciously, and in violation of SEPA by not complying with SEPA and the City's SEPA
20 regulations and the March 28, 2018 FEIS is contrary to law.

21
22 **VIII. CLAIMS**

1
2 8.1 Petitioners reallege and incorporate by reference each of the preceding
3 paragraphs as though fully set forth herein.

4 ***A. Land Use Petition Act.***

5 8.2 The passage of Resolution 31887, CB 119510 and CB 119535 identified above
6 are land use decisions under the Land Use Petition Act, Chapter 36.70C RCW.

7 8.3 Under the terms of RCW 36.70C.130, and for the reasons stated in Section VII
8 above, the City engaged in unlawful procedure or failed to follow a prescribed process, adopted
9 an erroneous interpretation of the law and made a clearly erroneous application of the law to
10 the facts when it approved and adopted Resolution 31887, CB 119510 and CB 119535 and
11 therefore those decisions are ultra vires, in violation of state and local law and regulations, and
12 said decisions are contrary to law.

13 ***B. Petition for Writs of Review.***

14 8.4 A petition for writ of review is pled in the alternative for both a statutory writ of
15 certiorari pursuant to RCW 7.16 and a constitutional writ of certiorari pursuant to Article 4,
16 Section 6 of the Washington State Constitution.

17 8.5 In the event that the Court concludes that any or all of the decisions identified
18 within Section IV of this Petition and Complaint are not land use decisions reviewable under
19 LUPA, there is no appeal, nor any plain, speedy and adequate remedy at law that would afford
20 Petitioners relief in this case and Petitioners are entitled to review by statutory and constitutional
21 writs of review. The errors alleged in the City's approval of Resolution 31887, CB 119510 and
22 CB 119535 for purpose of this Cause of Action are set forth in Section VII of this Petition.
23

1
2 8.6 Moreover, the City's has acted illegally, arbitrarily and capriciously, and in
3 violation of SEPA by not complying with SEPA and the City's SEPA regulations, and therefore
4 the March 28, 2018 FEIS is contrary to law and must be vacated.

5 8.7 Furthermore, because the challenged actions effect Petitioners' valuable
6 property rights, and the re-zoning will negatively effect property values, the actions are
7 irreconcilable with Article I, Section 16 of the Washington Constitution because they constitute
8 the taking of private property for public or private use without just compensation having been
9 first made.

10 ***C. Declaratory Relief.***

11 8.8 Pursuant to the Uniform Declaratory Judgments Act, RCW 7.24, Petitioners are
12 entitled to have the Court determine the legality of the City of Seattle actions and declare the
13 rights, status, and other legal relations of Petitioners.

14 8.9 The Court has the authority to declare that the June 10, 2019 decision by the
15 Seattle City Council to approve Resolution 31887, CB 119510 and CB 119535 is illegal for the
16 reasons stated at Section VII above and to further void the decisions of the Seattle City Council.

17 8.10 Moreover, the City's has acted illegally, arbitrarily and capriciously, and in
18 violation of SEPA by not complying with SEPA and the City's SEPA regulations, and therefore
19 the declare the March 28, 2018 FEIS is void.

20 **IX. RELIEF REQUESTED**

21 Petitioners request that the court enter the following relief:
22
23

1
2 9.1 For issuance of an order under LUPA directing the City of Seattle to prepare a
3 record of the decisions challenged in this petition for review by this court.

4 9.2 Alternatively, for the issuance of writ of review pursuant to RCW 7.16 and
5 Article 4, Section 6 of the Washington State Constitution, requiring that the City of Seattle
6 certify promptly to the Court a complete transcript of the proceedings below with respect to the
7 adoption of the March 28, 2018 FEIS, Resolution 31887, CB 119510 and CB 119535 including
8 all exhibits and evidence with respect to the actions taken and considered by the City of Seattle
9 so that they may be reviewed by this Court.

10 9.3 Pursuant to RCW 36.70C.120(3) and (5) and the common law, the Court should
11 enter orders allowing supplementation of the record and pretrial discovery.

12 9.4 Upon return of the decision record and/or the writs of review, the Court shall
13 review the record and all other evidence and enter a judgment finding that the City made an
14 erroneous interpretation of the law, engaged in an unlawful procedure and/or failed to follow
15 the proscribed process under the terms of SEPA and of LUPA, that the decisions approving
16 Resolution 31887, CB 119510 and CB 119535 are ultra vires, in violation of state and local law
17 and regulations, and that said decision is contrary to law.

18 9.5 That upon return of the decision record and the writ, the Court shall grant de
19 novo review of the March 28, 2018 FEIS and the decision to adopt Resolution 31887, CB
20 119510 and CB 119535 enter a judgment that the decision is erroneous and are contrary to law.

1
2 9.6 For a declaratory judgment pursuant to RCW 7.24.020, declaring that March 28,
3 2018 FEIS and the decision to adopt and approve Resolution 31887, CB 119510 and CB 119535
4 are null and void and of no effect.

5 9.7 For judgment against the Respondent and severally for Petitioners costs,
6 expenses and attorneys' fees incurred herein.

7 9.8 For such other and further relief as the Court deems just and equitable.

8 DATED this 28th day of June, 2019.

9 DICKSON FROHLICH, PS

10 

11
12 DANIEL J. FROHLICH, WSBA #31437
13 THOMAS L. DICKSON, WSBA #11802
14 Attorneys for Petitioners

CERTIFICATE OF MAILING

The undersigned declares under penalty of perjury under the laws of the State of Washington that on this day, I provided a true and accurate copy of the document to which this declaration is affixed to the following in the manner so indicated:

PARTY	DELIVERY METHOD
Department of Defense 1400 Defense Pentagon Washington, DC 20301-1400	<input checked="" type="checkbox"/> First-Class Mail, Postage Prepaid
Department of Defense Office of the Under Secretary of Defense for Acquisition, Technology and Logistics 1400 Defense Pentagon Washington, DC 20301-1400	<input checked="" type="checkbox"/> First-Class Mail, Postage Prepaid
Department of Army 600 Army Pentagon Washington, D.C. 20310	<input checked="" type="checkbox"/> First-Class Mail, Postage Prepaid
Department of Housing and Urban Development 451 - 7th Street SW Washington, DC 20410	<input checked="" type="checkbox"/> First-Class Mail, Postage Prepaid
Catholic Housing Services of Western Washington 118 Bell St, Seattle, WA 98121	<input checked="" type="checkbox"/> First-Class Mail, Postage Prepaid

Dated this 28th day of June 2019 at Tacoma, Washington.



Kimberly J. Lampman, MPA
LLI WSBA No. 9100472



Legislation Text

File #: Res 31887, **Version:** 1

CITY OF SEATTLE

RESOLUTION _____

A RESOLUTION adopting and approving an application for surplus federal property at Fort Lawton, including a redevelopment plan, and authorizing the City of Seattle Office of Housing to forward an application to the United States Department of Defense and the United States Department of Housing and Urban Development in response to the closure of the Fort Lawton Army Reserve Center.

WHEREAS, in 2005, the United States Congress authorized the closure of the Fort Lawton Army Reserve Center (Fort Lawton), and the U.S. Army published notices that the property will be available for non-military uses and ownership; and

WHEREAS, the United States Army determined that Fort Lawton is surplus to the United States needs in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101-510, as amended, and the 2005 Base Closure and Realignment Commission Report, as approved; and

WHEREAS, the Defense Base Closure and Realignment Act authorizes the Department of Defense (DoD) and U.S. Army to make final decisions regarding the disposition of base property and facilities, and the DoD requested the City submit the application for Fort Lawton, including the redevelopment plan and homeless assistance submission, to the DoD and U.S. Department of Housing and Urban Development (HUD); and

WHEREAS, the City, acting as the Local Redevelopment Authority (LRA), solicited and received Notices of Interest for property from homeless assistance providers and other eligible recipients of public benefit conveyances of federally-owned property; and

WHEREAS, the City, acting as the LRA, prepared an application in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101-510, as amended, and the 2005 Base Closure and

Realignment Commission Report, as approved; and

WHEREAS, the application prepared by the City (2008 Plan), which included a redevelopment plan providing for mixed-income housing and parks space, was approved by City Council in 2008, and in 2010 HUD determined the application complies with the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, 10 U.S.C. §2687 note, as amended, and its implementing regulations found at 24 CFR Part 586; and

WHEREAS, opponents of the 2008 Plan sued the City, and in 2010, the Court of Appeals upheld a Superior Court decision on the lawsuit, which argued that the State Environmental Policy Act (SEPA) was required prior to City Council adoption of redevelopment plan legislation; and

WHEREAS, implementation of the 2008 Plan was also stalled by the Great Recession, which diminished its financial viability, the market-rate housing component in particular; and

WHEREAS, in 2013, the City began working with the U.S. Army to plan for interim uses and in 2017 entered into a five-year lease of Fort Lawton; and

WHEREAS, in 2017, public outreach and comment for a modified redevelopment proposal for Fort Lawton began, and in 2018, the City published the Fort Lawton Final Environmental Impact Statement (FEIS) that analyzes probable adverse environmental impacts associated with the modified plan; and

WHEREAS, the Hearing Examiner decided in favor of the City on an appeal of the adequacy of the FEIS; and

WHEREAS, the final Fort Lawton Redevelopment Plan and Homeless Assistance Submission reflects years of collaboration between the City and its partners, Catholic Housing Services of Western Washington, United Indians of All Tribes Foundation, and Habitat for Humanity of Seattle/King County, and involved substantial public outreach and comment; and

WHEREAS, the Fort Lawton Redevelopment Plan balances Seattle's critical need for affordable housing for households with low incomes and permanent housing for persons experiencing homelessness with the climate and livability benefits of parks and open space, by providing 85 units of supportive housing for

seniors, up to 100 affordable rental housing units for households with incomes up to 60 percent of area median income, up to 52 affordable homes for purchase by families with incomes up to 80 percent of area median income, and increased parks and recreation space adjacent to Seattle's 534-acre Discovery Park; and

WHEREAS, the Fort Lawton Homeless Assistance Submission includes information about homelessness in Seattle; notices of interest proposing assistance to persons and families experiencing homelessness; a legally binding agreement for Fort Lawton property to be used to provide homeless housing; an assessment of the balance with economic and other development needs; a description of outreach taken by the City, including a list of the representatives of people experiencing homelessness who were contacted during the outreach process; and an overview of the citizen participation process, including comments received from at least one public hearing held before submitting the LRA application to HUD; and

WHEREAS, the City will continue to work with Metro to make transit service improvements in the Fort Lawton/Magnolia neighborhood; and

WHEREAS, on February 4, 2019, Mayor Jenny Durkan announced that she will transmit the redevelopment plan for Fort Lawton to City Council, stating that "As we continue to address Seattle's housing and affordability crisis, this plan builds on our commitment to drive the development of hundreds of more affordable homes while ensuring that our neighborhoods can be vibrant, livable spaces for this generation and the next;" and

WHEREAS, consistent with the City's commitment to further fair housing, the Fort Lawton Redevelopment Plan will provide affordable housing in Magnolia and will require robust, effective affirmative marketing to increase housing choices for protected classes in this high-opportunity neighborhood; and

WHEREAS, the City Council has reviewed the Fort Lawton Redevelopment Plan and Homeless Assistance Submission and held a Public Hearing to receive public comment; NOW, THEREFORE,

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEATTLE, THE MAYOR
CONCURRING, THAT:**

Section 1. The City of Seattle's Fort Lawton Redevelopment Plan, which includes the Homeless Assistance Submission, attached to this resolution as Attachment 1 and incorporated by reference, is adopted and approved.

Section 2. The City of Seattle's Director of Housing is authorized to forward an application to the United States Department of Defense and United States Department of Housing and Urban Development for conveyance of Fort Lawton to The City of Seattle and partner agencies pursuant to 24 CFR Part 586 and 32 CFR Part 176.

Adopted by the City Council the _____ day of _____, 2019, and signed by
me in open session in authentication of its adoption this _____ day of _____, 2019.

President _____ of the City Council

The Mayor concurred the _____ day of _____, 2019.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2019.

Monica Martinez Simmons, City Clerk

(Seal)

Attachments:

Attachment 1 - Fort Lawton Redevelopment Plan, 2019 Update

Appendix H - Homeless Assistance Submission

Appendix M - Lease



Legislation Text

File #: CB 119510, **Version:** 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE related to land use and zoning, amending page 52 of the Official Land Use Map, Seattle Municipal Code Chapter 23.32, to rezone property at the Fort Lawton Army Reserve Center.

WHEREAS, in 2005, the United States Congress authorized the closure of the Fort Lawton Army Reserve

Center (“Fort Lawton”), and the U.S. Army published notices that the property will be available for non-military uses and ownership; and

WHEREAS, the United States Army determined that Fort Lawton is surplus to the United States needs in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101-510, as amended, and the 2005 Base Closure and Realignment Commission Report, as approved; and

WHEREAS, the Defense Base Closure and Realignment Act authorizes the Department of Defense (DoD) and U.S. Army to make final decisions regarding the disposition of base property and facilities, and the DoD requested The City of Seattle (“City”) submit the application for Fort Lawton, including the redevelopment plan and homeless assistance submission, to the DoD and U.S. Department of Housing and Urban Development (HUD); and

WHEREAS, the City, acting as the Local Redevelopment Authority (LRA), solicited and received Notices of Interest for property from homeless assistance providers and other eligible recipients of public benefit conveyances of federally owned property; and

WHEREAS, the City, acting as the LRA, prepared an application in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101-510, as amended, and the 2005 Base Closure and

Realignment Commission Report, as approved; and

WHEREAS, the application prepared by the City (“2008 Plan”), which included a redevelopment plan providing for mixed-income housing and parks space, was approved by the City Council in 2008, and in 2010 HUD determined the application complies with the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, 10 U.S.C. § 2687 note, as amended, and its implementing regulations found at 24 CFR Part 586; and

WHEREAS, opponents of the 2008 Plan sued the City, and in 2010, the Court of Appeals upheld a Superior Court decision on the lawsuit, which argued that the State Environmental Policy Act (SEPA) was required prior to City Council adoption of redevelopment plan legislation; and

WHEREAS, implementation of the 2008 Plan was also stalled by the Great Recession, which diminished its financial viability, the market-rate housing component in particular; and

WHEREAS, in 2013, the City began working with the U.S. Army to plan for interim uses and in 2017 entered into a five-year lease of Fort Lawton; and

WHEREAS, in 2017, public outreach and comment for a modified redevelopment proposal for Fort Lawton began, and in 2018, the City published the Fort Lawton Final Environmental Impact Statement (FEIS), which analyzes probable adverse environmental impacts associated with the modified plan; and

WHEREAS, the Hearing Examiner decided in favor of the City on an appeal of the adequacy of the FEIS; and

WHEREAS, the final Fort Lawton Redevelopment Plan and Homeless Assistance Submission reflects years of collaboration between the City and its partners, Catholic Housing Services of Western Washington, United Indians of All Tribes Foundation, and Habitat for Humanity of Seattle/King County, and involved substantial public outreach and comment; and

WHEREAS, the Fort Lawton Redevelopment Plan balances Seattle’s critical need for affordable housing for households with low incomes and permanent housing for persons experiencing homelessness with the climate and livability benefits of parks and open space, by providing 85 units of supportive housing for

seniors, up to 100 affordable rental housing units for households with incomes up to 60 percent of area median income, up to 52 affordable homes for purchase by families with incomes up to 80 percent of area median income, and increased parks and recreation space adjacent to Seattle's 534-acre Discovery Park; and

WHEREAS, the Fort Lawton Homeless Assistance Submission includes information about homelessness in Seattle; notices of interest proposing assistance to persons and families experiencing homelessness; a legally binding agreement for Fort Lawton property to be used to provide homeless housing; an assessment of the balance with economic and other development needs; a description of outreach taken by the City, including a list of the representatives of people experiencing homelessness who were contacted during the outreach process; and an overview of the citizen participation process, including comments received from at least one public hearing held before submitting the LRA application to HUD; and

WHEREAS, the City will continue to work with Metro to make transit service improvements in the Fort Lawton/Magnolia neighborhood; and

WHEREAS, on February 4, 2019, Mayor Jenny Durkan announced that she will transmit the redevelopment plan for Fort Lawton to City Council, stating that "As we continue to address Seattle's housing and affordability crisis, this plan builds on our commitment to drive the development of hundreds of more affordable homes while ensuring that our neighborhoods can be vibrant, livable spaces for this generation and the next"; and

WHEREAS, the Fort Lawton Redevelopment Plan includes robust, effective affirmative marketing of housing at Fort Lawton to increase housing choices for protected classes in a high-opportunity neighborhood; and

WHEREAS, the City Council has reviewed the Fort Lawton Redevelopment Plan and Homeless Assistance Submission and held a Public Hearing to receive public comment; and

WHEREAS, City staff prepared a rezone analysis and final recommendation; and

WHEREAS, the property's land use designation is Multifamily Residential Area on the City's Future Land Use

Map as envisioned in the Fort Lawton Redevelopment Plan; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Official Land Use Map, Chapter 23.32 of the Seattle Municipal Code, is amended to rezone property on page 52 of the Official Land Use Map, as shown on Exhibit A attached to this ordinance.

Section 2. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2019, and signed by me in open session in authentication of its passage this _____ day of _____, 2019.

President _____ of the City Council

Approved by me this _____ day of _____, 2019.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2019.

Monica Martinez Simmons, City Clerk

(Seal)

Attachments:

Exhibit A - Proposed Rezone



Legislation Text

File #: CB 119535, **Version:** 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to the Fort Lawton Redevelopment Plan Application; authorizing a Memorandum of Agreement setting forth the terms of collaboration between The City of Seattle and Seattle School District No. 1 in the redevelopment of the former Fort Lawton Army Reserve Center.

WHEREAS, in 2005, the United States Congress authorized the closure of the Fort Lawton Army Reserve Center (“Fort Lawton”), and the U.S. Army published notices that the property will be available for non-military uses and ownership; and

WHEREAS, the U.S. Army determined that Fort Lawton is surplus to the United States’ needs in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101-510, as amended, and the 2005 Base Closure and Realignment Commission Report, as approved; and

WHEREAS, the Defense Base Closure and Realignment Act authorizes the Department of Defense (DoD) and U.S. Army to make final decisions regarding the disposition of base property and facilities, and the DoD requested The City of Seattle (“City”) submit the application for Fort Lawton, including the redevelopment plan and homeless assistance submission, to the DoD and U.S. Department of Housing and Urban Development (HUD); and

WHEREAS, the City, acting as the Local Redevelopment Authority (LRA), solicited and received Notices of Interest for property from homeless assistance providers and other eligible recipients of public benefit conveyances of federally owned property; and

WHEREAS, the City, acting as the LRA, prepared an application in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101-510, as amended, and the 2005 Base Closure and

Realignment Commission Report, as approved; and

WHEREAS, the application prepared by the City (“2008 Plan”), which included a redevelopment plan providing for mixed-income housing and parks space, was approved by the City Council in 2008, and in 2010 HUD determined the application complies with the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, 10 U.S.C. § 2687 note, as amended, and its implementing regulations found at 24 CFR Part 586; and

WHEREAS, opponents of the 2008 Plan sued the City, and in 2010, the Court of Appeals upheld a Superior Court decision on the lawsuit, arguing that review under the State Environmental Policy Act (SEPA) was required prior to City Council adoption of redevelopment plan legislation; and

WHEREAS, implementation of the 2008 Plan was also stalled by the Great Recession, which diminished its financial viability, the market-rate housing component in particular; and

WHEREAS, in 2013, the City began working with the U.S. Army to plan for interim uses and in 2017 entered into a five-year lease of Fort Lawton; and

WHEREAS, in 2017, public outreach and comment for a modified redevelopment proposal for Fort Lawton began; and

WHEREAS, the City received a large volume of comments urging modification of the preferred alternative to include a school and also received a petition, started through the website change.org, requesting that the City partner with Seattle Public Schools (aka Seattle School District No. 1) to develop a high school and additional park space at Fort Lawton; and

WHEREAS, in response, Seattle Public Schools conducted a thorough review that addressed basic feasibility questions and cited key challenges to siting a school at Fort Lawton including lack of immediate resources and inability to demonstrate immediate need for a school in the area; and

WHEREAS, in 2018, the City published the Fort Lawton Final Environmental Impact Statement (FEIS), which analyzes probable adverse environmental impacts associated with the modified plan; and

WHEREAS, in response to continued interest in Seattle Public Schools participation in redevelopment at Fort Lawton by some Magnolia residents, the City modified the parks component of the preferred alternative as analyzed in the FEIS to include acquisition and development of two unlit multipurpose athletic fields; and

WHEREAS, the Hearing Examiner decided in favor of the City on an appeal of the adequacy of the FEIS; and

WHEREAS, the final Fort Lawton Application reflects years of collaboration between the City and its partners, Catholic Housing Services of Western Washington, United Indians of All Tribes Foundation, and Habitat for Humanity of Seattle/King County, and involved substantial public outreach and comment; and

WHEREAS, the Fort Lawton Application balances Seattle's critical need for affordable housing for households with low incomes and permanent housing for persons experiencing homelessness with the climate and livability benefits of parks and open space, by providing 85 units of supportive housing for seniors, up to 100 affordable rental housing units for households with incomes up to 60 percent of area median income, up to 52 affordable homes for purchase by families with incomes up to 80 percent of area median income, and increased parks and recreation space adjacent to Seattle's 534-acre Discovery Park; and

WHEREAS, Seattle Public Schools shares the City's vision for a redevelopment that includes affordable housing, park, and recreational uses; and

WHEREAS, the City Council has reviewed the Fort Lawton Application, including Redevelopment Plan and Homeless Assistance Submission, and held a Public Hearing to receive public comment; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Director of the Office of Housing and Superintendent of Parks and Recreation, or such officials' designees, are authorized to execute a Memorandum of Agreement (MOA), substantially in the form

of Attachment A to this ordinance, between The City of Seattle and Seattle School District No. 1 concerning the Application for Federal Surplus Property at Fort Lawton, which includes a Redevelopment Plan and Homeless Assistance Submission, and conveyance of parcels currently owned by the U.S. Army to The City of Seattle and partner organizations in accordance with the Fort Lawton Redevelopment Plan.

Section 2. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2019, and signed by me in open session in authentication of its passage this _____ day of _____, 2019.

President _____ of the City Council

Approved by me this _____ day of _____, 2019.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2019.

Monica Martinez Simmons, City Clerk

(Seal)

Attachments:

Attachment A - Memorandum of Agreement Regarding Fort Lawton Redevelopment Plan between Seattle
School District No. 1 and City of Seattle

King County Department of Assessments

Fair, Equitable, and Understandable Property Valuations

You're In: Assessor >> Look up Property Info >> eReal Property

Department
of
Assessments500 Fourth
Avenue,
Suite ADM-
AS-0708,
Seattle, WA
98104Office Hours:
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PARCEL DATA

Parcel	102503-9334	Jurisdiction	SEATTLE
Name	SEATTLE CITY OF FAS	Levy Code	0010
Site Address		Property Type	C
Geo Area	20-20	Plat Block / Building Number	
Spec Area		Plat Lot / Unit Number	
Property Name	RESERVE CENTER - FORT LAWTON	Quarter-Section-Township- Range	SE-10-25-3

Legal Description

PCL OF LD IN SEC 10 & 15 SD TWP & RGE DAF CAAP 7.33 FT NLY OF C OF S MON LOC IN NXN OF W GOVERNMENT WAY & 36TH AVE W TH N 01-17-08 E 35 FT TH S 83-35-50 W 52.05 FT TH S 84-30-07 W 70 FT TH N 01-55-27 E 309.75 FT TH N 86-43-56 W 236.56 FT TH N 86-49-36 W 349.44 FT TH N 40-58-44 W 78.12 FT TH N 09-28-45 E 437.80 FT TO THE TPOB TH N 40-44-23.5 E 260.331 FT TH N 02-11-14.7 E 422.367 FT TH N 88-49-13.6 W 745.257 FT TH N 00-50-33.6 E 506.409 FT TH N 0-50-05.4 E 488.76 FT M/L TAP 58.6 FT N OF S LN OF LOT 5 IN SEC 10 TH S 88-53-02.5 E ON LN PLL W S LN SD LOT 5 1271.643 FT M/L TO E LN SD LOT 5 SD NXN BEING CALLED POINT A (NE COR FORT LAWTON) TH RETURNING TO SD TPOB KWN AS MON F TH S 88-58-20 E 378.60 FT TH S 89-50-11 E 196.65 FT TH S 89-50-11 E 118 FT M/L TO E LN OF W 1/2 OF NE 1/4 OF SEC 15 TH N IN SD LN & E LN OF SW 1/4 OF SE 1/4 & IN E LN OF SD LOT 5 TO POINT A AS DESC ABOVE LESS RD & LESS POR WITHIN PCL #102503-9056 & 8336 TGV S 58.6 FT OF GL 5 LESS RD TGV PCL OF LD IN SEC 15 SD TWP & RGE DAF CAAP 7.33 FT NLY OF C OF S MON LOC IN NXN OF W GOVERNMENT WAY & 36TH AVE W TH N 01-17-08 E 35 FT TO THE TPOB TH S 83-35-50 W 52.05 FT TH S 84-30-07 W 70 FT TH N 01-55-27 E 309.75 FT TH N 01-17-08 E 516.41 FT TH S 89-50-11 E 118 FT M/L TO E LN OF W 1/2 OF NE 1/4 OF SEC 15 SD LN ALSO BEING C/L OF 36TH AVE W TH S 01-17-08 W 813.23 FT TO THE TPOB LESS RD TGV POR OF PCL LD BEING POR OF NW 1/4 OF NE 1/4 STR 15-25-03 DAF COMM AT A CONC MON AT NXN OF 36TH AVE W & W GOVERNMENT WY; TH N 01-18-21 E ALG C/L OF SD 36TH AVE W 42.33 FT TH S 83-57-06 W 52.07 FT TO IRON PIPE "R-3" TH S 84-35-38 W 69.84 FT TO IRON PIPE "R-4" TH N 02-01-02 E 309.33 FT TO CONC MON "R-2" & TPOB TH N 86-45-41 W 236.94 FT TO CONC MON "D1-2" TH N 86-47-39 W 349.22 FT TO CONC MON "R-11" TH N 41-02-52 W 78.28 FT TO CONC MON "R-13" TH N 09-33-56 E 437.92 FT TO CONC MON "MON F" TH S 88-56-16 E 378.63 FT TO CONC MON "D5-1" TH S 89-54-22 E 196.56 FT TO CONC MON TH S 04-14-54 W 516.56 FT TO TPOB EXC POR TH OF WLY OR NLY OF FOLG DESC LN COMMAT SD CONC MON "D5-1" TH S89-54-22E 112.55 FT TO CONC MON "APS-8" AND BEG OF SD DESC LN TH S 01-14-54 W 158.34 FT TO CONC MON "APS-7" TH N 88-52-56 W 87.91 FT TO CONC MON "APS-3" TH S01-07-04W 231.80 FT TO CONC MON "APS-4" TH N 88-58-28 W 312.78 FT TO CONC MON "APS-5" TH S25-01-24W 114.79 FT TO CONC MON "APS-8" & END OF SD DESC LN

Plat Block:

Plat Lot:

LAND DATA

Highest & Best Use As if Vacant	SINGLE FAMILY	Percentage Unusable	
Highest & Best Use As Improved	INTERIM USE	Unbuildable	NO
Present Use	Office Building	Restrictive Size Shape	NO
Land SqFt	1,369,035	Zoning	SF 7200
Acres	31.43	Water	WATER DISTRICT
		Sewer/Septic	PUBLIC
		Road Access	PUBLIC
		Parking	ADEQUATE
		Street Surface	PAVED

Views

Rainier		Waterfront Location	
Territorial		Waterfront Footage	0
Olympics		Lot Depth Factor	0
Cascades		Waterfront Bank	
Seattle Skyline		Tide/Shore	
Puget Sound		Waterfront Restricted Access	
Lake Washington		Waterfront Access Rights	NO
Lake Sammamish		Poor Quality	NO
Lake/River/Creek		Proximity Influence	NO
Other View			

Designations

Historic Site		Topography	
Current Use	(none)	Traffic Noise	
Nbr Bldg Sites		Airport Noise	
Adjacent to Golf Fairway	NO	Power Lines	NO
Adjacent to Greenbelt	NO	Other Nuisances	NO
Other Designation	NO	Problems	
Deed Restrictions	NO	Water Problems	NO
Development Rights Purchased	NO	Transportation Concurrence	NO

Reference
Links:

- [King County Tax Links](#)
- [Property Tax Advisor](#)
- [Washington State Department of Revenue](#) (External link)
- [Washington State Board of Tax Appeals](#) (External link)
- [Board of Appeals/Equalization](#)
- [Districts Report](#)
- [iMap](#)
- [Recorder's Office](#)
- [Scanned images of surveys and other map documents](#)

Notice mailing date:
06/13/2019

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Easements	NO	Other Problems	NO
Native Growth Protection Easement	NO	Environmental	
DNR Lease	NO	Environmental	NO

BUILDING

Accessory

Accessory Type	Picture	Description	Qty	Unit Of Measure	Size	Grade	Eff Yr	%	Value	Date Valued
Miscellaneous		reserve center				(unknown)			1000	8/31/2007

TAX ROLL HISTORY

This is a government owned parcel.
Change to state law (RCW 84. 40.045 and 84.40.175) by the 2013 Legislature eliminated revaluation of government owned parcels.

SALES HISTORY

REVIEW HISTORY

PERMIT HISTORY

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LETTER 2

FOSTER PEPPER PC

Direct Phone (206) 447-6407
Direct Facsimile (206) 749-1935
joe.brogan@foster.com

January 29, 2018

Via E-Mail and U.S. Mail

Ms. Lindsay Masters
Office of Housing
City of Seattle
P.O. Box 94725
Seattle, WA 98124-4725
Email: OH_Comments@seattle.gov

Re: Comments on the Draft Environmental Impact Statement for the Fort Lawton
Army Reserve Center Redevelopment Project issued on December 14, 2017

Dear Ms. Masters:

This law firm represents the Discovery Park Community Alliance ("DPCA") on matters related to the Seattle Office of Housing's ("Housing's") Fort Lawton Redevelopment proposal. This letter provides DPCA's comments on the Draft Environmental Impact Statement prepared for the Fort Lawton Army Reserve Center Redevelopment Project ("DEIS") prepared by Housing and issued on December 14, 2017.

In September 2017, we sent a letter to you on behalf of DPCA setting forth reasons why Fort Lawton should be preserved as a public park. A copy of the letter is enclosed as Attachment A. We never received a response from Housing to our letter.

On January 9, 2018, Housing held a public meeting to accept comments on the DEIS. The public meeting was so crowded that very few supporters of DPCA or residents of the area surrounding the Fort Lawton site had any opportunity to speak, let alone even get into the building. The demonstrated public interest in the proposal and lack of opportunity for public participation in the single public meeting necessitates additional public meetings to comment on the DEIS to ensure that comments from diverse community members are fully heard and considered.

This letter incorporates the comments in our September 2017 letter by reference and sets forth additional reasons why the DEIS does not meet the requirements of the State Environmental Policy Act ("SEPA"), Chapter 43.21C RCW.

Fort Lawton presents a rare opportunity to provide additional public park space that Seattle's rapidly growing population desperately needs. The current DEIS ignores the environmental benefits that preservation of Fort Lawton as a park would have, and ignores the adverse environmental impacts that development of hundreds of units of housing on one of the City's last remaining open spaces will have. As set forth below, the DEIS is deficient for the

following reasons: (1) Alternatives 2, 3, and 4 are not “reasonable alternatives” required by SEPA; (2) the DEIS fails to disclose and analyze significant adverse impacts associated with the Seattle Public School uses at Fort Lawton; (3) the DEIS fails to fully evaluate numerous environmental impacts of the four alternatives; (4) the DEIS fails to address the irreconcilable conflicts between the preferred Alternative 1 and the federal government’s Defense Base Closure and Re-alignment Act of 1990 (“BRAC”) process, as well as the federal government’s considerations under the National Environmental Policy Act (“NEPA”).

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For all of these reasons, DPCA is asking Housing to revise the DEIS to fully and fairly consider the environmental impacts of the project before issuing a Final Environmental Impact Statement (“FEIS”).

1. Alternatives 2, 3, and 4 are not “reasonable alternatives” as required by SEPA.

The DEIS does not comply with the requirements of SEPA because it fails to propose “reasonable alternatives” to the preferred Alternative 1 and fails to provide the City of Seattle, as the decision maker, with sufficient information to make a reasoned decision between the four alternatives.

The underlying purpose of SEPA is to avoid environmental degradation, to preserve, and even to enhance environmental quality by requiring the actions of local government agencies to be based on sufficient environmental information and be in accord with SEPA’s substantive policies. RCW 43.21C.030(2), .030(1), .060. To accomplish this, SEPA requires preparation of an environmental impact statement (“EIS”) to provide the decision maker with “sufficient information to make a reasoned decision.” *Citizens Alliance To Protect Our Wetlands v. City of Auburn*, 126 Wn.2d 356, 362, 894 P.2d 1300 (1995). The process of preparing an EIS

is intended to assist the agencies and applicants to improve their plans and decisions, and to encourage the resolution of potential concerns or problems prior to issuing a final statement. An environmental impact statement is more than a disclosure document. It shall be used by agency officials in conjunction with other relevant materials and considerations to plan actions and make decisions.

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WAC 197-11-400(4).

An adequate EIS clearly, concisely, and impartially describes a proposal’s significant impacts and environmentally preferable alternatives, including mitigation measures. WAC 197-11-400(3), 400(4). The EIS must be reliable and backed by sufficient environmental analysis. WAC 197-11-400(2)-(3). The EIS must be prepared early enough to inform and guide decision makers, rather than simply rationalize or justify decisions already made. WAC 191-11-406. *See Barrie v. Kitsap County*, 93 Wn.2d 843, 613 P.2d 1148 (1980). SEPA seeks to inform and guide

decisions in part through the consideration of “reasonable alternatives,” which are defined by the SEPA regulations as:

an action that could feasibly attain or approximate a proposal’s objectives, but at a lower environmental cost or decreased level of environmental degradation. Reasonable alternatives may be those over which an agency with jurisdiction has authority to control impacts, either directly, or indirectly through requirement of mitigation measures. (See WAC 197-11-440(5) and 197-11-660.)

WAC 197-11-786.

If there is information on significant adverse impacts that is essential to a reasoned choice among alternatives and the costs of obtaining such information are not exorbitant, the lead agency must obtain the information and include it in an environmental impact statement. WAC 197-11-080(2). *See Methow Valley Citizens Council v. Regional Forester*, 833 F.2d 810 (9th Cir. 1987).

Housing states that “[t]he purpose of the project is to create an affordable, livable community with safe, high quality housing options for those with low or no incomes, and to meet the growing demand for open space and recreational opportunities.” DEIS at p. 2-18. Housing selected Alternative 1 as the preferred alternative, which calls for the construction of 238 units of high-density affordable housing and limited park uses on the Fort Lawton site.

The DEIS provides three alternatives to the preferred Alternative 1, none of which are “reasonable alternatives” as required by SEPA for the reasons discussed below. Alternative 2 proposes development of 113 market-rate single-family units on the Fort Lawton site with no park space, and off-site affordable housing at the Talaris site. Alternative 3 propose a public park on Fort Lawton, and off-site affordable housing at the Talaris site. Thus, Alternatives 2 and 3 rely entirely on the feasibility of developing 238 units of affordable housing at the Talaris site.

The DEIS fails to evaluate any other potential off-site location for affordable housing besides Talaris, stating that the Talaris site:

is included only as an example of a possible off-site alternative for the affordable and formerly homeless housing. It is provided in order to conceptually analyze probably adverse impacts that would be expected with redevelopment at that site or other off-site locations in the City. Additional more detailed SEPA review of the Talaris site, or another off-site location, would be required should that or another site ultimately be selected for the affordable and formerly homeless housing.

DEIS at p. 1-1 (emphasis added).

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Under the DEIS, Alternatives 2 and 3 do not present “reasonable alternatives” because there is absolutely no information in the DEIS that allows a decision maker to make a reasoned decision as to whether the off-site affordable housing of those alternatives, combined with the proposed uses of the Fort Lawton site, could feasibly attain or approximate the affordable housing objectives of Alternative 1, but at a lower environmental cost or decreased level of environmental degradation. *See* WAC 197-11-786. This vital information is not difficult or expensive to obtain. Housing could identify and evaluate specific sites in Seattle in addition to Talaris that offer opportunities for affordable housing development to offer feasible alternatives to the proposed Alternative 1.

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Furthermore, as raised in our September 2017 letter, Housing’s reliance on acquiring the Talaris site – one of the most expensive properties in the City (last sold for \$15.6 million in 2000) and zoned for single-family residential use – for off-site affordable housing as the *only* alternative that would preserve Fort Lawton as a public park is inherently unreasonable. Moreover, it is now impossible.

This month, it was publically announced that Quadrant Homes has agreed to buy Talaris and proposes building 63 single-family homes on large lots on the site, estimated to sell for about 2 million dollars each.¹ With Talaris off the market and no other off-site opportunities identified or evaluated by Housing for affordable housing, Alternatives 2 and 3 cannot meet the definition of “reasonable alternatives.” Without Alternative 3, the only alternative that would provide park space, the DEIS utterly fails to address the adverse environmental impacts that development of hundreds of units of housing will have on some of the last remaining open space in the City.

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The lack of reliable analysis of the preferred Alternative 1 against Alternatives 2 and 3 suggests that the DEIS is simply rationalizing or justifying a decision already made by Housing to pursue 234 units of affordable housing at Fort Lawton without regard for reasonable alternatives that would avoid the irreversible environmental degradation that Alternative 1 will cause. This is impermissible under SEPA. WAC 197-11-406 (EIS “will not be used to rationalize or justify decisions already made”).

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Without Alternatives 2 and 3, only preferred Alternative 1 and Alternative 4 of “no-action” remain. SEPA mandates that the “no-action” alternative be evaluated and compared to the other alternatives. WAC 197-11-440(5)(b)(ii). The EIS must “[p]resent a comparison of the environmental impacts of the reasonable alternatives, and include the no action alternative.” WAC 19-11-440(5)(b)(vi). An EIS that evaluates only a proposed Alternative and no-action alternative may be deemed inadequate for not analyzing a sufficient range of alternatives. *Town of Woodway v. Snohomish Cty.*, 180 Wn.2d 165, 171, 322 P.3d 1219 (2014) (“growth board found that the county’s EIS was faulty because it did not consider multiple alternatives . . . —the only alternative it considered was no change at all.”); *Davidson Serles & Assocs. v. Cent. Puget*

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¹ *See* <https://www.seattletimes.com/business/real-estate/seattles-largest-batch-of-single-family-homes-in-decades-is-pitched-for-oasis-site/>.

Sound Growth Mgmt. Hearings Bd., 159 Wn. App. 148, 152–53, 244 P.3d 1003 (2010) (noting that the Growth Board found an EIS inadequate because it did not analyze a sufficient range of alternatives).

Alternative 4 is not a reasonable alternative to the proposed Alternative 1 because it does not attain any of the objectives of the proposal. WAC 197-11-786 (a reasonable alternative is “an action that could feasibly attain or approximate a proposal’s objectives”); *Friends of First United Methodist Church v. City of Seattle*, 130 Wn. App. 1031 (2005) (decision not reported in P.3d) (alternative was not reasonable because it did not attain the project goals). Under Alternative 4, Fort Lawton would remain in its existing condition, not serving any public open space, recreational, or housing purposes and, therefore, not fulfilling any of the objectives of Housing’s Fort Lawton Reserve Center Redevelopment Project.

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Because Alternatives 2, 3, and 4 are not reasonable alternatives, as defined under the SEPA rules, proposed Alternative 1 is the only real alternative left in the DEIS. With Alternative 1 standing alone with no reasonable alternative to compare its environmental impacts against, the DEIS accomplishes nothing more than rubber-stamping approval of Housing’s proposed Alternative 1. This is inadequate under SEPA. *See* WAC 191-11-406. *See Barrie v. Kitsap County*, 93 Wn.2d 843, 613 P.2d 1148 (1980). The entire purpose of an EIS is to provide reasonable alternatives of a reasonable number and range to provide essential information on adverse environmental impacts that allows for a reasoned choice among alternatives. *Weyerhaeuser v. Pierce Cty.*, 124 Wn.2d 26, 41, 873 P.2d 498 (1994) (“There must be a reasonably detailed analysis of a reasonable number and range of alternatives.”). The DEIS for the Fort Lawton Reserve Center Redevelopment Project fails to meet this standard because it offers only one feasible alternative: preferred Alternative 1. Contrary to SEPA, the DEIS leaves no opportunity for a reasoned choice among other alternatives that could be feasibly attained or approximate the project’s objectives.

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Housing should, at a minimum, revise the DEIS to offer and evaluate “reasonable alternatives that would mitigate adverse effects of proposed actions on the environment,” as required by SEPA. WAC 197-11-030(1)(g). The alternatives should include at least one off-site alternative that could feasibly attain or approximate the goals of the project. *See* WAC 197-11-400(5)(d). To have fully evaluated the impacts to the environment, the DEIS should include at least one reasonable alternative that preserves all of Fort Lawton as public park space. If preservation of Fort Lawton as a park must be tied to the provision of affordable housing, Housing should propose an off-site location that presents a feasible opportunity for development of affordable housing.

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2. The DEIS fails to disclose and analyze probable significant adverse impacts associated with Seattle Public School uses at Fort Lawton.

On November 20, 2017, the City of Seattle and Seattle Public Schools (“SPS”) entered into a Partnership Agreement² whereby the City and SPS agreed to a collaborative partnership to “jointly achieve unique opportunities for developing SPS facilities, including SPS [*sic*] in the Fort Lawton Redevelopment Plan.” The detailed agreement includes provisions for a joint development agreement, partnership and financial commitments, and mobility planning. While the agreement sets forth plans to utilize a portion of the Fort Lawton property for a range of school-related uses, the DEIS states that the environmental impacts of such a partnership would be evaluated at a later date. DEIS at p. 2-8. This position is untenable under SEPA. SEPA requires that a proposal identify all the related and interdependent pieces of the proposal. Actions are related if they are dependent on each other. In this case, SEPA dictates that Alternative 1 and the SPS proposal must be considered together as one proposal in the same environmental document. *See* WAC 197-11-060(3)(b).

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SEPA requires agencies to disclose the reasonably foreseeable impacts of its proposals. The disclosure of impacts related to SPS uses is governed by WAC 197-11-080, which necessitates additional disclosure, or a worst case analysis be advanced, concerning the impacts of SPS uses at Fort Lawton.

3. The DEIS fails to evaluate numerous significant, adverse environmental impacts of each of the proposed alternatives.

In addition to the failure of the DEIS to provide reasonable alternatives to preferred Alternative 1, as described in Section 1 above, the DEIS is inadequate in its analysis of numerous adverse environmental impacts of each of the alternatives. Without sufficient analysis, it is impossible for a decision maker to make a reasoned decision on the proposal. The deficiencies of the DEIS in its analysis of adverse environmental impacts are summarized below. Revision of the DEIS before publishing the FEIS is required to address each of these deficiencies.

a. Land Use

The DEIS does not adequately address the land use issues accompanying its preferred Alternative 1, or Alternatives 2 or 3. As the City acknowledges, the Fort Lawton property is currently zoned Single-Family 7200, surrounded by areas zoned 7200 and SF 5000, with minimal Lowrise 3, NC1 and NC2 to the southeast. Even if the City rezones the Fort Lawton area away from single-family, such a rezone would remain inconsistent with the rezone factors in the Land Use Code and cut against many of the policies of the Comprehensive Plan. Development in the Fort Lawton area of high-density housing will have irreversible negative

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² The agreement is titled, “Seattle Public Schools and City of Seattle Public Process Partnership Agreement: School District Facilities, Fort Lawton, Memorial Stadium, and Seattle Center.”

impacts, and will undermine the growth in urban centers and urban villages envisioned by in the Comprehensive Plan.

The Key Findings in the Land Use section of the DEIS (§ 3.6) state:

Alternative 1 would require that a portion of the Fort Lawton site be rezoned from the existing SF 7200 zoning to Lowrise residential zoning (e.g. LR 3)

...

Alternative 1 and 2 [*sic*, believed to refer to Alternatives 2 and 3] would require that a portion of the Talaris site be rezoned from SF 5000 to lowrise residential zoning; a Comprehensive Plan amendment would also be required.

In the DEIS's discussion of the fact that both sites require a rezone under one or more of the alternatives, Housing has not met its obligation to weigh and balance the provisions of the rezone criteria laid out in SMC 23.34. SMC 23.34.007.A. The Code states:

The most appropriate zone designation shall be that for which the provisions for designation of the zone type and the locational criteria for the specific zone match the characteristics of the area to be rezoned better than any other zone designation.

SMC 23.34.008.B.

Specifically, the Code states that an area zoned single-family may *not* be rezoned to multifamily. SMC 23.34.013. A rezone to something more intensive than single-family is not appropriate unless the City Council determines the single-family zoned area does not meet the criteria for single family designation. SMC 23.34.010.

The rezone criteria also indicate a gradual transition between zoning categories is preferred. SMC 23.43.008.E. The City's proposal to alter the zoning of the Fort Lawton site is not in alignment with the rezone policy of gradual transition, as evidenced by the City's Figure 3.6-3; a rezone would dramatically alter the greater Fort Lawton and Magnolia area.

When discussing the rezones that would be required for both sites under Alternatives 1, 2 and 3, the DEIS states that the applicant will prepare a rezone proposal for Alternative 1, and City Council approval would be required. The DEIS relies speculatively on future actions, such as amendments to Subchapter II of SMC 23.42, and summarily states that "the relationship of the project to the criteria in SMC 23.34.008 will be evaluated" when an application for a rezone is made. This does not adequately address the Code's rezone criteria. While the DEIS addresses some aspects of the rezone criteria—describing the historic land use patterns and current zoning—it does not provide a reasoned and complete analysis of how such a rezone application would conform to the Code. Given that a rezone would be pivotal to using either Fort Lawton or

Talaris for affordable housing development, Housing's failure to specifically address the rezone criteria in SMC 23.34 fails to provide the decision maker with information needed to make a reasoned decision on the proposal.

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With respect to the Talaris site (or some other, unidentified site for off-site affordable housing), the DEIS again fails to analyze the criteria for rezoning the site from Single-Family 5000 to Lowrise. The Talaris site is surrounded by areas zoned primarily SF 5000, with some NC2 and LR3 to the north. The *City of Seattle 2035 Comprehensive Plan* designates future land use of Talaris as single-family residential, not Lowrise. As with the Fort Lawton site, without any analysis of the rezone criteria and feasibility of a rezone, it is impossible for Housing to make a reasoned decision among preferred Alternative 1 and Alternatives 2 and 3.

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b. Recreation and Open Space

The DEIS fails to address how its alternatives conform to the City's Comprehensive Plan and other goals for open space, points raised in our September 2017 letter. City policies include, "[p]reserve and reclaim park property for public use and benefit, and ensure continued access to parkland for the growing population," with goals of considering "retaining City-owned properties that are in environmentally critical areas as natural areas." *Comprehensive Plan* (P. 3.6); *id.* at 70 (LU 17.26). Developing Fort Lawton with affordable or market-rate housing works against the identified policy to "[e]nhance wildlife habitat by restoring forests and expanding the tree canopy on City-owned land." *Id.* at 142 (P 3.4).

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The DEIS forecloses a park-only alternative. The DEIS points out that, during the scoping process, requests for a park-only alternative were turned away because such an analysis did not further the City's mission to increase affordable housing within the City. DEIS at p. 2-8. However, the Comprehensive Plan states it is a policy of the city to "[m]ake the most of the limited available land by developing parks and open spaces so that they can accommodate a variety of active and passive recreational uses." *Comprehensive Plan* at 140 (P 1.13). The City has a unique opportunity in the Fort Lawton site to demonstrate its commitment to open space and recreation for all future residents. The significance of open space is apparent now more than ever, as Seattle is one of the fastest-growing cities in the country. Housing's decision to disregard a park-only alternative, and to disregard the opportunity to increase Discovery Park by nearly ten percent, demonstrates a lack of commitment to its stated objective of preserving open space.

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Despite the fact that the 1986 Discovery Park Master Plan is not binding on Fort Lawton,³ Fort Lawton, as part of the former base, is inextricably linked to Discovery Park. Housing does not provide adequate analysis of how developments at the Fort Lawton site – either affordable housing or market-rate housing – complement or impede the future of Discovery Park. Nor does the DEIS contemplate how forfeiting open space plans at Fort Lawton

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³ The City acknowledges that this was stated in *Magnolia Neighborhood Planning Council v. City of Seattle*, 155 Wn. App. 305 (2010).

may negatively impact development within Discovery Park itself in the future. Such an analysis is important for understanding the future of Discovery Park, the future of open space in Seattle, and the potential for future efforts to chip away at the park.

In the 1972 Discovery Park Master Plan, the following statement was made:

In the years to come there will be almost irresistible pressure to carve out areas of the park in order to provide sites for various civic structures or space for special activities. There will in the future be structures and activities without number for which, it will be contended, this park can provide an "ideal site" at no cost. The pressures for those sites may constitute the greatest single threat to the park. They must be resisted with resolution. If they are not, the park will be so fragmented that it can no longer serve its central purpose. Only those activities and only those structures should be accepted which are in harmony with the overall theme, character and objective of the park. There must be a deep commitment to the belief that there is no more valuable use of this site than as an open space.⁴

While Fort Lawton is not presently part of Discovery Park, the spirit of this quote resonates today. Housing should evaluate at least one reasonable alternative that preserves Fort Lawton as a public park space, which may include the provision of community services such in a park setting.⁵

c. Transportation

The DEIS does not adequately address transportation concerns relating to traffic, public transit, and parking. Additional review and analysis of these effects is important in order to provide an accurate picture of how development on either site will cause transportation-related impacts. The DEIS's consideration of adverse impacts on transportation is deficient in the following ways:

- **The DEIS fails to reasonably analyze impacts to local intersections.** By focusing on a limited number of street intersections, the DEIS has not adequately addressed the full scope of the impact of additional cars on the existing over-burdened transportation infrastructure in the area surrounding Fort Lawton. The DEIS states that Alternative 1 would generate an estimated additional 1,260 vehicle trips per day going to and from the Fort Lawton area. DEIS at p. 3.10-9. It concludes that no significant traffic impacts are anticipated at the

⁴ Discovery Park Master Plan, Fort Lawton Park Plan (1972) (emphasis added), available at: <https://www.seattle.gov/Documents/Departments/ParksAndRecreation/Parks/masterplan1.pdf>

⁵ The BRAC process provides the City with the opportunity of pursuing a Public Benefit Conveyance for park use. See BRAC Manual Section C.5.4.10.

Fort Lawton site because all studied intersections are expected to continue to operate at “LOS B,” which is an acceptable level of operation. DEIS at p. 3.10-10. The DEIS chose four intersections to evaluate for purposes of traffic volume.⁶ DEIS at p. 3.10-3. Housing expects these study area intersections to handle direct access to and from the site, but the DEIS fails to account for impacts to other important access roads in the greater Magnolia area. These include Commodore Way—an existing two-lane, winding road through residential area that is already overburdened, and W. Emerson Pl and Gilman Ave. W., both of which provide irreplaceable access to Fort Lawton. Impacts with respect to traffic on these roadways have not been addressed. Magnolia is served by a finite number of access points, which already experience congestion. The addition of approximately 600 new residents, and approximately 1,200 new vehicles per day, will have a significant impact both on ingress and egress to the site for residents and visitors, as well as to the surrounding area and existing residents. Housing should provide a more thoroughly analysis of these impacts, expanding its traffic review to include greater numbers of streets and intersections.

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- **The DEIS fails to reasonably analyze cumulative traffic impacts.** The assessment of Alternative 1 also fails to disclose and analyze cumulative adverse impacts caused by pipeline projects and anticipated growth in the greater Magnolia area. The DEIS states, “there is little growth from new development expected in the immediate vicinity.” DEIS at p. 3.10-4. However, this assertion ignores the effects of the Mandatory Housing Affordability zoning changes and changes to accessory dwelling unit regulations on the immediate vicinity. It also undercuts the City’s goals of ensuring there are sufficient services and resources for residents, by anticipating there will be little growth from the new development. Beyond City policy changes, public and private developments in the Interbay area will very likely impact transportation and public services, yet the DEIS does not account for such impacts. A thorough disclosure and analysis of the potential adverse traffic impacts on the greater Magnolia community has not been developed. The analysis must disclose and assess reasonably foreseeable growth and density changes in the vicinity of the proposal.

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- **The DEIS fails to reasonably analyze traffic impacts at Talaris or another site.** Similarly, the DEIS did not adequately discuss the impacts of traffic near the Talaris site. It concludes that development at Talaris would only result in a less than one second delay at two intersections, which Housing does not consider a significant impact. However, two intersections near Talaris will operate at LOS F and E (which constitute the worst ratings and indicate poor traffic operations with long delays). Additional information describing how the City expects to mitigate increases in traffic is necessary to provide a more adequate picture of how development at Talaris will affect the transportation grid. The DEIS provides no analysis of traffic impacts on any other off-site location for affordable housing.

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⁶ These four intersections are: (1) 40th Avenue E/Texas Way; (2) Discovery Park Boulevard/Texas Way; (3) W Government Way/36th Avenue W; and (4) Discovery Park Boulevard/34th Avenue W.

➤ **The DEIS fails to reasonably analyze impacts to bus routes.** The information provided in the DEIS demonstrates that public transit service will be inadequate to serve anticipated demand. Presently, only one bus line services the area—the Metro Transit 33. King County Metro’s Long Range Plan does not anticipate adding additional bus routes: “[T]he existing level of local bus service is planned to remain through its long range planning year of 2040.” DEIS at p. 3.10-5. Alternative 1 is expected to accommodate approximately 596 new residents. DEIS at p. 2-21. One bus line cannot adequately accommodate this increase in demand. The DEIS does not adequately account for the impact of only one bus route on future residents and traffic congestion. The Long Range Plan’s identification of “frequent” bus service by 2040 does not constitute adequate consideration of transit impacts—and with full build-out at Fort Lawton expected by 2025, potential frequent service by 2040 does not adequately address or mitigate impacts. The DEIS lists Metro Route 24, half a mile away from the site, as a bus route for consideration. However, it is unrealistic that hundreds of residents, many of whom will be senior citizens, will be able to walk a half mile for the transit they must rely on.

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➤ **The DEIS fails to reasonably analyze impacts to residential transit trips.** The DEIS cites 2010 Census data for the fact that 25% of residential trips in Magnolia occur by transit. Based on this projection, it concludes the existing bus service would be adequate, which overlooks the reality that many senior citizen residents may not drive, many residents may not own vehicles, and many residents may not have a driver’s license. The fact that 25% of residential trips in Magnolia occur by transit right now is not a transferrable fact in light of the proposed uses at Fort Lawton. The DEIS does not adequately disclose and assess the impacts of increased transit demand as a result of the proposal.

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➤ **The DEIS fails to reasonably analyze the feasibility of bike share programs.** It is not realistic for the City to incorporate bike share programs as an adequate measure of alternative means for residents to transit in and out of the Fort Lawton area. As described above, many residents will be senior citizens who will not be able to utilize bike share programs. Furthermore, the topography of the area, distance to resources and services, and practicality generally do not lend themselves to assuming residents of the new development will use a bike share program. As stated in the September 2017 letter, expansion of bike lanes and routes is not envisioned by the City in the area around Fort Lawton. It is unlikely that young children and/or their parents will be able to utilize a bike share program to ride to the grocery store or carry out other essential errands. Mitigation of this kind is not realistic.

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➤ **The DEIS fails to reasonably analyze parking impacts.** The DEIS also raises issues with respect to parking and does not fully address them. Under Alternative 1, 266 parking spaces would be provided, with peak parking demand ranging from 257-294 spaces, indicating parking demands would exceed available parking. DEIS at p. 3.10-12. The DEIS concludes that no significant impacts are expected as a result, citing that the parking demand from the affordable housing could be addressed through parking management strategies. DEIS at p. 3.10-12. Yet there is no adequate disclosure or analysis of these parking management

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strategies, and how they might truly mitigate parking concerns. In order to fully understand the impacts of development under Alternative 1, additional disclosure and analysis is required.

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d. Historic and cultural preservation

The Fort Lawton property has a long history of use as a forested natural area and a military base. Development of housing on the Fort Lawton site under Alternatives 1 and 2 is inconsistent with both the current use of the site and the historic context of the site. Nor is it in alignment with City policies to allow multifamily development on a property that was historically public and located in a single-family residential area. *See* SMC 23.34.008.F.1.g; *see also* Comprehensive Plan at 66 (LU G14 aims to “[m]aintain the city’s cultural identity and heritage”).

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The disclosure and assessment of historic and cultural resources on both properties is inadequate. The DEIS concedes that buildings on the Fort Lawton site may be eligible for Landmark designation. DEIS at p. 3.9-1. The DEIS continually describes the historic nature of the Fort Lawton area, but concludes that the existing buildings lack significant associations, design characteristics or prominence, or do not meet the threshold of 25 years to qualify for landmark designation. However, the DEIS indicates at least one hall, Harvey Hall, could meet the criteria for Seattle Landmark. The impacts of designating Harvey Hall or Leisy Hall as landmarks and converting the Fort Lawton to high-density housing is not adequately studied in the DEIS.

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The DEIS fails to adequately address the potential impacts on the Fort Lawton Cemetery. Under “other possible measures” of mitigation, the DEIS mentions the potential of retaining undeveloped buffer to avoid affecting the integrity of the Cemetery setting by the introduction of new built environment elements. DEIS at p. 3.9-15. It is unclear from the DEIS how the introduction of hundreds of housing units and hundreds of new residents would impact the setting of the Fort Lawton Cemetery. Particularly, under Alternative 2, market-rate housing would be built directly across the street, seemingly tens of feet away from the cemetery. The effects of this action are not adequately discussed. Additionally, the Fort Lawton Cemetery is eligible for listing on the National Register of Historic Places. The DEIS does not explore how the addition of housing at Fort Lawton, affordable or market-rate, would impact the Cemetery as a historic piece of the greater Fort Lawton area.

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Talaris was already designated as an historic landmark by the City of Seattle in 2013, and is eligible for listing in the National Register for Historic Places. DEIS at p. 3.9-8. The DEIS points out that alterations to the existing site would be inconsistent with the siting and design of existing buildings and the surrounding neighborhood. DEIS at p. 3.9-13. Taking into account the fact that Certificates of Approval would need to be obtained for alterations to the site, these impacts contribute to the unreasonableness of Talaris as an alternative site.

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e. Biological Resources

The DEIS does not adequately disclose and analyze probable significant adverse impacts on wildlife and wildlife habitat. The DEIS acknowledges that permanent displacement of certain wildlife “less tolerant of urban uses” may occur, but states that past military use of Fort Lawton and conference center uses at Talaris may also have impacted these species. SEPA requires a prospective, not retrospective, analysis of how the proposal will impact biological resources, including wildlife.

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In order to make a reasoned choice among alternatives, there must be a sufficient disclosure of biological resources, such as wetlands, and a comprehensive assessment of how the proposal would impact those resources. The DEIS summarily concludes that wetland or stream features may be present. However, it concludes, “additional studies would be needed to document wetlands and/or streams and their required buffers in the north portion of the site.” DEIS at p. 3.2-2. Such information should be provided now to assist with understanding impacts to biological resources. Relying on “preliminary site plans” the DEIS concludes no direct impacts to known wetlands will occur. Yet it acknowledges that the boundaries and classifications of the wetlands would need to be re-verified. DEIS at p. 3.2-8. The DEIS’s treatment of wetland and similar biological resources is inadequate on its face.

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The DEIS fails to disclose and adequately address adverse impacts on wildlife at both Fort Lawton and Talaris. The DEIS states that Great Blue Herons have been found on or near the site in the past, but does not describe how development at Fort Lawton might impact Great Blue Heron in the future. Also, the DEIS describes that site plans would avoid directly impacting a Bald Eagle nest tree, and surrounding areas, but bases its conclusion on “preliminary site plans” only. SEPA requires that additional information be obtained and disclosed with respect to probable significant adverse impacts to both listed and de-listed species, including the Bald Eagle.

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The potential for permanent displacement of species during and after construction is not adequately discussed, nor is the potential for disruption during breeding season. Fort Lawton is adjacent to over 500 acres of open park space that serves as wildlife habitat. The DEIS must address potential adverse impacts to wildlife and wildlife habitat at the Fort Lawton site in relation to Discovery Park. The Fort Lawton property presents a rare opportunity to restore wildlife habitat and provide contiguous wildlife habitat within Seattle. *See Comprehensive Plan* at 68 (LU 17.2, 17.20 Aim to promote and protect contiguous wildlife-habitat areas).

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f. Earth

The DEIS fails to adequately disclose the potential for landslides as a function of existing steep slopes and erosion hazards at the Fort Lawton site. This is a serious concern for neighboring residential properties.

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The DEIS also fails to adequately disclose and analyze the risk of methane migrating from the neighboring landfill onto the Talaris site. It concludes that the risk of methane migration is considered low, and that no impacts are expected under Alternatives 2 or 3. The potential for adverse impacts to human health is significant. The Talaris housing area would include numerous children and elderly with potential health issues. A more thorough analysis of this threat is important to understand the potential adverse impacts on the health and safety of future residents at the Talaris site.

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g. Noise

The DEIS fails to adequately address the adverse impacts of noise under all of the Alternatives. The DEIS states that because the Fort Lawton site is vacant, "the only existing sources of noise are wildlife that use the site and occasional maintenance of the facilities." DEIS at p. 3.4-2. The DEIS identifies increases in noise from construction, including clearing and grading, demolition, and construction, but states these are "temporary increases in noise." But with build-out occurring over several years, these impacts would be far from temporary. The DEIS does not adequately disclose and analyze the increased noise that will result from constructing a high-density development containing hundreds of housing units in what is now a quiet open space.

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h. Public services

The DEIS does not adequately disclose the impact on public services or the lack thereof for both sites. Specifically, the DEIS does not provide sufficient analysis of how on-site services will mitigate the need for a level of increased responsiveness on the part of local law enforcement. The DEIS contemplates that certain services will be provided on-site, including case management services by Catholic Community Services of Western Washington and residential counselors. DEIS at p. 3.11-12. The DEIS cites to these services as possible mitigation for the need to utilize police service, but does not adequately address how these services will work to prevent involvement by law enforcement, or serve medical needs. Any influx of nearly six hundred people to a small area will require an increased local law enforcement presence. An increase in elderly residents and children will also require additional medical services in close proximity to the site.

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The DEIS also fails to disclose probable adverse impacts on public schools. Overcapacity of schools is an issue at both sites: Fort Lawton Elementary school will be over-capacity, as well as Eckstein Middle School near Talaris. While the DEIS does identify that the Seattle Public Schools (SPS) anticipates opening additional schools near Fort Lawton, the DEIS does not adequately address how and exactly when SPS may exercise its ability to accommodate growth, including adjusting attendance area boundaries and meeting requirements of providing additional transportation services.

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i. Aesthetics/Visual Resources

The DEIS does not adequately disclose and analyze the amount of localized light spillage to areas adjacent to the Fort Lawton or Talaris sites. Additionally, shadow documentation is provided in the DEIS Appendix G, but such documentation does not adequately describe the effects of shadows from both sites onto surrounding areas in a way that is understandable and accessible. It is difficult to discern from the documentation the effects of increased shadows from new development under Alternatives 1 and 2 at Fort Lawton on neighboring areas to the North and East. Furthermore, shadow documentation is not provided for the Talaris site where site plans—showing housing built up to the property line (Figure 2011)—would likely result in impacts to neighboring areas with respect to shadows. Such a design is a dramatic change from the present configuration of the site, and the impacts on neighboring areas to the Talaris site are not adequately disclosed and analyzed.

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j. Housing

The DEIS's disclosure and analysis of housing impacts is inadequate. The DEIS states that no significant housing impacts are expected to result from any of the redevelopment alternatives, in spite of the fact that over 200 housing units will be added to the Fort Lawton and/or Talaris sites under Alternatives 1-3, which includes an area that has historically never hosted housing (Fort Lawton) or hosted housing on the scale it is projected to host (Talaris).

The DEIS fails to adequately describe how high-density residential development at Fort Lawton makes sense based on its lack of designation as part of an Urban Center or Urban Village. Such growth cuts against the City's goal to grow in designated Urban Centers or Urban Villages. Seattle's Comprehensive Plan has goals of accommodating "a majority of the City's expected household growth in urban centers and urban villages" and "a substantial portion of the city's growth in hub and residential urban villages." See Comprehensive Plan at 28, 32 (GS G2 and GS 2.3); see also *id.* at 42 (LU G1 aims to "[a]chieve a development pattern consistent with the urban village strategy"). While the area is designated for multi-family residential uses in the Seattle 2035 Comprehensive Plan, implementation of Alternative 1 remains inconsistent with the City's Urban Center and Urban Village Strategy.

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4. The City has failed to follow requirements under federal law.

a. The City has failed to follow BRAC procedures.

The City's DEIS is predicated on contracting with both Catholic Community Services ("CCS") and Habitat for Humanity ("HH") as service providers and housing construction and management partners. However, this assemblage of housing partners is not what the original Notice of Intent ("NOI") contemplated in 2007. The Preferred Alternative is also a distinctly different project in configuration, programming and overall scope.

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In 2006-2007, 55 organizations submitted proposals as part of the NOI process. BRAC procedure affords all organizations a fair opportunity to submit proposals and have them evaluated on equal footing. Today, the Seattle Housing Authority is no longer the master developer at Fort Lawton. Instead, HH has expanded its role as the lead housing partner at Fort Lawton. The Office of Housing has simply ignored BRAC procedure and is now embracing a different master developer and a different housing proposal altogether.

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BRAC procedure warrants that the NOI process be re-opened to competitive bidding and that a new RFP solicitation process be undertaken to allow the many other stakeholders and providers who are players and entrants in the homeless and low-income housing fields to participate in the process.

b. The City cannot incorporate and reasonably rely upon the previous NEPA Environmental Assessment for SEPA purposes.

The U.S. Army Corps of Engineers' ("Corps") Environmental Assessment ("EA") and Finding of No Significant Impact ("FONSI") may no longer be relied upon by the City, HUD, the Department of the Interior or the Corps because they are based on a different project than what is now proposed among the EIS Alternatives. The FONSI relied upon an earlier Traditional Disposal and Reuse Alternative ("TDRA"). The October 18, 2012 FONSI was based on a smaller amount of total housing units (216) and a completely different range and size of housing types. Thus, the EA and FONSI were based on an analysis of different environmental impacts.

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The TDRA anticipated demolition of all existing structures, and the construction of 125 market-rate units ranging from smaller to large market rate single-family homes, 85 homeless units and 6 low-income townhomes. In contrast, none of the DEIS Alternatives mirror that proposal. Alternative 1 contemplates more housing units than that studied by the Corps (238 units). Alternatives 2 and 3 also each contemplate 238 housing units off-site. An increase in the number of total units to be constructed, the change in footprint or size of those structures, and their associated environmental impacts, is a fundamental change in a proposal that requires that any pre-existing environmental analysis be revisited. For these reasons, the City cannot incorporate and reasonably rely upon the previous NEPA Environmental Assessment. *See* WAC 197-11-635. The City acknowledged this fact in the DEIS by stating, "... updated National Environmental Policy Act (NEPA) review ..." will be required. DEIS at IV.

c. The Corps cannot rely on the DEIS as currently configured

Under NEPA, the Military Departments must identify and consider the proposed action and reasonable alternatives and their respective environmental impacts. Not only does the City acknowledge in the DEIS that prior NEPA review is inadequate, to the extent that the Corps intends to rely on the City's flawed SEPA alternatives analysis in support of a new FONSI or ROD, that analysis is flawed for the reasons stated above. Accordingly, the City's

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January 29, 2018
Ms. Lindsay Masters
Office of Housing
Page 17

Redevelopment Plan cannot be given substantial deference under BRAC regulations and federal law.

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cont.

5. Conclusion.

For all of the reasons set forth in Sections 1 through 4 above, Housing should host additional public comment sessions and revise the DEIS to provide reasonable alternatives and a full analysis of the environmental impacts of all of the alternatives. At least one of the reasonable alternatives should provide for the preservation of the entire Fort Lawton site as a park space – the alternative that will have the least adverse environmental impacts and provide the greatest number of environmental and widespread community benefits. The BRAC process provides a pathway for accomplishing this objective while also accommodating homeless assistance services, other than housing, on or off-site.

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Sincerely,

FOSTER PEPPER PLLC



Joseph A. Brogan

CC: DPCA

Enclosure: Attachment A – September 2017 Letter

ATTACHMENT A



FOSTER PEPPER PLLC

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September 27, 2017

Ms. Lindsay Masters
Office of Housing
City of Seattle
P. O. Box 94725
Seattle, WA 98124-4725

Re: Discovery Park Community Alliance's Comments on the Fort Lawton
Redevelopment & Proposed EIS Alternatives

Dear Ms. Masters:

This law firm represents the Discovery Park Community Alliance ("DPCA") on matters related to the Seattle Office of Housing's ("Housing's") Fort Lawton Redevelopment proposal.

DPCA is a growing association of over 100 residents from the Magnolia neighborhood and from the city of Seattle at large who are dedicated to ensuring that the Fort Lawton Army Reserve Center ("FLARC") property is annexed to Discovery Park.

This letter addresses the following: (1) DPCA's reasons for supporting the expansion of Discovery Park through the federal government's Defense Base Closure and Re-alignment Act of 1990 ("BRAC") process; (2) Legal impediments to the City of Seattle ("City") and Housing's plans to rezone and redevelop the FLARC property; (3) Legal deficiencies in Housing's proposed Environmental Impact Statement ("EIS") Alternatives; and (4) Legal and procedural irregularities concerning the City's actions, past and present.

I. Preserve & Expand Discovery Park.

The members of DPCA sincerely believe that the BRAC process presents a rare and unique opportunity to make a reasoned choice about the legacy of one of the City's most treasured public spaces, Discovery Park. The City's long-range master plan for Fort Lawton calls for the park to be a place of quiet and tranquility. It is a sanctuary for wildlife, and an outdoor classroom for generations of Seattle's citizens to learn about the natural world.

The City's Comprehensive Plan includes a goal of providing one acre of "breathing room" open space for every 100 residents in Seattle. The City has continued to acquire select open spaces to meet the demands of future population growth and to preserve wooded hillsides,

creek corridors and other wildlife habitat. As recently as June, 2017, Housing presented data in support of this demonstrated need.

The City estimates that Seattle's population will increase by 120,000 new residents over the next 18 years. Seattle Parks and Recreation (SPR) will need to continue to acquire parkland in order to maintain the desired citywide level of service.

Office of Housing, Open House/EIS Scoping Meeting, June 19, 2017.

As the designated Local Redevelopment Authority ("LRA"), the City has the opportunity to make a substantial investment in planning for adequate parkland for present and future generations. The FLARC facilities are immediately adjacent to Discovery Park, and present a logical and ideal extension of public park property. No other EIS alternative meets this stated need.

~~Developing the FLARC property contradicts the City's Comprehensive Plan policies that aim to protect and improve upon open space and environmentally critical areas, including:~~

- "Make the most of the limited available land by developing parks and open spaces so that they can accommodate a variety of active and passive recreational uses." Comprehensive Plan at 140 (P 1.13).
- "Enhance wildlife habitat by restoring forests and expanding the tree canopy on City-owned land." *Id.* at 142 (P 3.4). The Fort Lawton property includes Environmentally Critical Areas (ECAs) for wildlife habitat, among other ECAs. Areas to the north, west, and south of the property are covered in heavy tree canopy coverage. The Fort Lawton property presents a rare opportunity in the City to restore wildlife habitat and expand tree canopy coverage. *See* Comprehensive Plan at 68 (LU 17.2, 17.20 aim to promote and protect contiguous wildlife-habitat areas). This opportunity would be lost if the City were to develop the FLARC property with market rate or low-income housing.
- "Preserve and reclaim park property for public use and benefit, and ensure continued access to parkland for the growing population." *Id.* (P. 3.6).
- "Consider retaining City-owned properties that are in environmentally critical areas as natural areas." *Id.* at 70 (LU 17.26).

The Fort Lawton property has a long history of use as a forested natural area and a military base. It is inconsistent not only with the current use of the area but also the unique, historic context of the site to suddenly allow multifamily development on a property that was historically public and located in a single-family residential area. *See* SMC 23.34.008.F.1.g; *see also* Comprehensive Plan at 66 (LU G14 aims to "[m]aintain the city's cultural identity and heritage").

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BRAC procedure provides an avenue by which the LRA can pursue a Public Benefit Conveyance ("PBC") for park purposes. BRAC Manual at C5.4.10.1.1 (2006). Consistent with BRAC procedure, Housing should have pursued this sponsorship with the National Park Service ("NPS") for the entire FLARC property prior to completing the 2008 Redevelopment Plan. However, since the Washington State Court of Appeals rendered the 2008 Plan "void and without effect," the City has an opportunity to engage once again with the NPS, Housing and Urban Development ("HUD") and the Department of Defense ("DOD") to pursue a PBC for the entire FLARC property.

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II. Alternative 2 "Mixed Income Affordable Housing" is Inconsistent with Seattle's Comprehensive Plan and Chapter 23 SMC.

The FLARC property is currently zoned Single-Family 7200. The surrounding areas are zoned Single-Family 7200 or SF 5000. The property is surrounded by single-family residences to the north and east and by Discovery Park to the south and west. It would be inconsistent with the Land Use Code, the Comprehensive Plan, and the historic character of the Magnolia neighborhood and Discovery Park to rezone the Fort Lawton property for the multifamily, low-rise development, as proposed in Alternative 2.

When considering any rezone, the City Council must weigh and balance the provisions of Chapter 23.34 SMC. SMC 23.34.007.A. "The most appropriate zone designation shall be that for which the provisions for designation of the zone type and the locational criteria for the specific zone match the characteristics of the area to be rezoned better than any other zone designation." SMC 23.34.008.B.

"An area zoned single-family that meets the criteria of Section 23.34.011 for single-family designation may **not** be rezoned to multifamily." SMC 23.34.013 (emphasis added).¹ Additionally, single-family zoned areas "may be rezoned to zones more intense than Single-family 5000 only if the City Council determines that the area does not meet the criteria for single-family designation." SMC 23.34.010.A.²

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The Fort Lawton property meets the criteria for single-family zoning as it is surrounded entirely by single-family residential and park uses. Any rezone of the property as would be necessary to carry out proposed Alternative 2 would violate SMC 23.34.013 and SMC 23.34.010.A.

Even if the City could rezone the Fort Lawton property for multifamily use, it would be inconsistent with the rezone factors set forth in the Land Use Code and the goals and policies of

¹ Except as otherwise provided in Section 23.34.010.B, which does not apply because the Fort Lawton property is not located in an urban village.

² Except as provided in subsections B or C of Section 23.34.010, which would not apply to a proposed rezone of the Fort Lawton property because it is not located in an urban village or the Northgate Overlay District.

the Comprehensive Plan. The Code requires examining the negative and positive impacts of every proposed rezone. *See* SMC 23.34.008.F. Allowing high-density development on the Fort Lawton property would create negative impacts and undermine the Comprehensive Plan's goals of planning development around urban centers and urban villages, providing adequate transit, providing for recreational opportunities and protecting the natural environment, and protecting the historic character of the area.

Fort Lawton is not located in an urban center or urban village. To the contrary, the property is extremely removed from any urban centers or villages, separated from Ballard and the Downtown by the Ballard-Interbay manufacturing industrial center. Allowing multifamily development in a single-family zone outside of an urban center or urban village conflicts with the City's Comprehensive Plan's goals of accommodating "a majority of the city's expected household growth in urban centers and urban villages" and "a substantial portion of the city's growth in hub and residential urban villages." *See* Comprehensive Plan at 28, 32 (GS G2 and GS 2.3); *see also id.* at 42 (LU G1 aims to "[a]chieve a development pattern consistent with the urban village strategy").

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The Fort Lawton property is serviced by only one bus route that runs exclusively from Discovery Park to the Downtown. No priority corridors for transit investment are anticipated near the property by the Comprehensive Plan. *See* Comprehensive Plan at 79 (Transportation Figure 4). Nor does it appear that the City has any plan to implement or enhance bicycle access to the property. Without adequate access to public transportation, it will not be feasible for residents to access basic services, including various forms of public assistance and medical care, without a car. Additionally, the streets surrounding the Fort Lawton property are currently quiet, residential streets without sidewalks. The Comprehensive Plan treats areas around the Fort Lawton property as a low to moderately-low priority for pedestrian investments by the City, leaving the area lacking both the transit and pedestrian infrastructure necessary to effectively serve multifamily residents. *See id.* at 82 (Transportation Figure 7).

III. The Proposed EIS Alternatives are Flawed.

The Proposed EIS Alternatives appear designed to lead inexorably to a single conclusion—Alternative 2, and the agency record supports this conclusion.

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As an initial matter, meaningful SEPA review cannot proceed without a clearly defined proposal, and nothing the City has circulated thus far defines the "proposal." SEPA defines "proposal" as a "proposed action," WAC 197-11-784, and none of the documents circulated at the recent scoping meetings describes the proposed action. As a result, the purported alternatives cover vastly disparate government actions that do not provide any meaningful understanding of the environmental impacts of what the City proposes to do.

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Under SEPA, a "reasonable alternative" is an action "that could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation." WAC 197-11-440(5)(b). Without a clearly defined "proposal," the public cannot ascertain the "proposal's objectives," and no set of project objectives could be met

by the three action alternatives identified in the scoping notice. The proposed alternatives read more like a visioning exercise that seeks the public's input into the substantive decision the City should make, rather than an earnest attempt to identify ways to achieve a singular goal at the lowest environmental cost.

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The only common thread between the three action alternatives is the provision of affordable housing, either at Fort Lawton or at an offsite location. To be considered a "reasonable alternative," the City must establish some hope of acquiring control of the alternative site. Yet, the City's materials suggest affordable housing could be developed at the Talaris site without any showing that the City can compete on the open market for such prime real estate, or condemn it upon payment of fair market value. Neither has the City demonstrated the political will required to develop Talaris into low- or no-income housing. By way of example, the EIS would be no less informed by a study of the impacts of building homeless and affordable housing in the middle of Port of Seattle Terminal 5; it is unlikely the City will acquire the Talaris property even assuming the City has the authority to condemn it.

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All three action alternatives involve some development of Fort Lawton, but it is not clear that such development in each alternative is related to the proposal's objective of providing affordable housing. Alternative 2.-the one that Council selected in 2008 and that the Office of Housing clearly prefers—develops Fort Lawton as a mix of single- and multi-family affordable housing, with accompanying park space.

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Alternative 3, *Market Rate Housing*, as presented, is confusing. The Office of Housing has no authority to develop market-rate housing, so it could not, for example, build and sell market-rate, single-family housing at Fort Lawton as a revenue stream to fund affordable housing elsewhere. Perhaps the idea is to turn the City into a real estate speculator, acquiring Fort Lawton at no cost in exchange for a promise to build affordable housing elsewhere, then selling it undeveloped on the open market to pay for the affordable housing. Otherwise, the alternative requires the City to stand aside while the Army sells Fort Lawton to private developers. As such, it is no different from the no-action alternative, and it is no longer clear whether it is at all related to development of affordable housing offsite.

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Alternative 4 has even less of a link than Alternative 3 between acquisition of Fort Lawton and the development of affordable housing offsite. Alternative 4 would require the City to develop Fort Lawton into park space *and* acquire land elsewhere to develop as affordable housing. Particularly since the voters approved creation of the Seattle Parks District with its "Fix it First" mission, it is not obvious that the City has the ability to fund development of a new park *and* the ability to acquire an alternative site—presumably Talaris—for development as affordable housing.

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If the City's selection of alternatives leads to confusion, at least the reason for selecting those alternatives is clear. The Office of Housing is papering over a decision the City Council made no later than 2008 to build an affordable housing project at Fort Lawton. But a lead agency cannot bias its analysis to make its favorite alternative appear to be the only viable

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alternative. SEPA may allow the City a preferred alternative, but it also requires an earnest study of “reasonable alternatives.” The City’s efforts thus far have not begun to meet this requirement.

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The City should acquire Fort Lawton and either develop it as a park or bank it as future park space. We understand that the BRAC allows the City to acquire the land at no cost for development meeting a public purpose, and expansion of Discovery Park is a public goal that the City should pursue.

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The City’s proposed Alternative 4 comes closest to the DPCA’s preferred use for the FLARC, development of the entire site as a public park. The objectionable component is that the proposal is inextricably linked to construction of homeless and affordable housing at an off-site location, the Talaris Conference Center. Housing acknowledges that the site would need to be acquired on the open real estate market at a premium given its location. DPCA is at a loss as to why the City would seek out some of the most expensive real estate in the City to provide affordable housing. Any alternative that relies on acquisition and construction of homeless and affordable housing at Talaris simply does not amount to a *reasonable alternative* under the SEPA Rules. *See* WAC 197-11440(5)(b).

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DPCA submits that the City should de-link the housing component from Alternative 4, *Public Park On-site*, and study an alternative in the Draft EIS that is strictly about the development of the entire FLARC site as a public park, with no linkage to constructing housing at an off-site location.

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IV. City Process: Additional Procedural Irregularities.

A. Lack of Transparency

A fundamental tenet of environmental review is that a lead agency provide complete disclosure of environmental consequences of a proposal. *King County v. Washington State Boundary Review Board for King County and City of Black Diamond*, 122 Wn.2d 648, 663-664, 860 P.2d 1024 (1993). In *Black Diamond*, the Washington State Supreme Court cautioned that without such disclosure, “the inertia made by government decisions (made without environmental impacts statements) may carry the project forward regardless.” That inertia is present here.

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In 2010, the Washington State Court of Appeals held that the City failed to provide complete disclosure of the environmental consequences of its decision to adopt Resolution 31086 and the 2008 Fort Lawton Redevelopment Plan, and the Court ordered the City to complete SEPA review. *See Magnolia Neighborhood Planning Council v. City of Seattle*, 155 Wn. App. 305, 316, 230 P.3d 190 (2010).

In 2008-2009, the City proceeded to draft two separate leases with the Archdiocesan Housing Authority (“AHA”), now Catholic Housing Services (“CHS”), to implement Alternative 2. CHS is now the lead developer for housing both homeless individuals and families at Fort

Lawton. The City has characterized these leases as “Legally Binding Agreements” in correspondence to the NPS.

Additional public records obtained by DPCA provide clear evidence that despite the fact that Housing is considering four alternatives in its 2017 EIS Scoping Process, it has already engaged and is actively working with its architect, SMR, to develop site plans to implement Alternative 2. (SMR, Site Plans dated June 19, 2017). DPCA submits this is further evidence that the City’s EIS process is nothing more than a procedural smokescreen to comply with the Court of Appeals’ mandate, while the City moves forward with plans to implement its preferred alternative, Alternative 2. This is precisely the type of governmental action the Court referred to as the “snowballing effect” in the *Black Diamond* case.

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B. Failure to Observe BRAC Procedures - Notice of Intent.

The City’s EIS is predicated on contracting with both Catholic Community Services (“CCS”) and Habitat for Humanity (“HH”) as service providers and housing construction and management partners. However, this was a product of the Notice of Intent (“NOI”) submission and selection process that occurred over ten years ago. The proposal that is now contemplated in Alternative 2 is not what the NOI partners proposed in 2007. It is a distinctly different project in configuration, programming and overall scope. It is not a sustainable proposition that the City can simply default to the earlier NOI partners even though the proposal is now different than what was evaluated under the competitive NOI BRAC process.

In 2006-2007, 55 organizations submitted proposals as part of the NOI process. BRAC procedure affords all organizations a fair opportunity to submit proposals and have them evaluated on equal footing. Today, the Seattle Housing Authority is no longer the master developer at Fort Lawton. Instead, HH has expanded its role as the lead housing partner at Fort Lawton. The Office of Housing has simply ignored BRAC procedure and is now embracing a different master developer and a different housing proposal altogether.

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BRAC procedure warrants that the NOI process be re-opened to competitive bidding and that a new RFP solicitation process be undertaken to allow the many other stakeholders and providers who are players and entrants in the homeless and low-income housing fields to participate in the process.

C. Improper Reliance Upon Army Corps Environmental Assessment.

The U.S. Army Corps of Engineers’ (“Corps”) Environmental Assessment (“EA”) and Finding of No Significant Impact (“FONSI”) may no longer be relied upon by the City (or the Corps) because they are based on a different project than what is now proposed among the EIS Alternatives. The Corps FONSI relied upon an earlier Traditional Disposal and Reuse Alternative (“TDRA”). The October 18, 2012 FONSI was based on a smaller amount of total housing units (216) and a completely different range and size of housing types. Thus, the EA and FONSI were based on an analysis of different environmental impacts.

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The TDRA anticipated demolition of all existing structures, and the construction of 125 market-rate units ranging from smaller to large market rate single-family homes, 85 homeless units and 6 low-income townhomes. In contrast, none of the present Proposed EIS Alternatives mirror that proposal. Alternative 2, *Mixed Income Affordable Housing and Park*, proposes up to 235 units, with 75-100 units of affordable rental housing, 50 affordable ownership homes, and 85 units of senior supportive housing. Housing types include Lowrise apartments, rowhouses and townhouses. An increase in the number of total units to be constructed, the change in footprint or size of those structures, and their associated environmental impacts, is a fundamental change in a proposal that requires that any pre-existing environmental analysis be revisited. For these reasons, neither the City nor the Department of the Army can continue to rely on the previous environmental review to support a potential Record of Decision.

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V. Conclusion

Given the serious nature of the irregularities and deficiencies in the BRAC, SEPA, and planning processes outlined here, and given the lack of conformity that the alternatives proffered have to the City's zoning and growth management plans, DPCA believes that the City must revisit its compliance with BRAC, SEPA, and planning requirements and restart the FLARC redevelopment process in a manner that is in accordance with statutes and regulations which govern the process. Likewise, the City must revisit and develop realistic alternatives that are consistent with its zoning regulations, growth plans and master planning documents.

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In light of the above, DPCA requests a meeting with Housing to address these matters and to ensure that the City develop alternatives for the FLARC property that are based on an inclusive, public process.

I am available at (206) 447-6407, and look forward to working with you to schedule such a meeting.

Sincerely,

FOSTER PEPPER PLLC



Joseph A. Brogan

CC: DPCA